Supreme Court, U. S.
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APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-1572

UNITED STATES OF AMERICA,
Petitioner

—*v.*—

TED R. GRAYSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED MAY 10, 1977
CERTIORARI GRANTED OCTOBER 3, 1977

In the Supreme Court of the United States

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RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1975	
Nov. 21	1—INDICTMENT—1 Count J.S.2
Nov. 21	2—ORDER—for Warrant of Arrest of Deft. under Bail Reform Act of 1966. (M) 1 cc U.S. Atty.
Nov. 21	WARRANT ISSUED AND HANDED U.S. MARSH. WITH C/C INDICT.
Nov. 24	3—NOTICE—to Deft. setting Arraingment for 12/2/75 at Wmspt., at 11:00 AM with cc Indictment and Financial Affidavit. cc U.S.Atty., Marsh., Prob., Lewis & Scr. Warden, Sandstone, Minn.
Nov. 24	4—MARSHAL ALERT—Detainer filed on 11/24/75 against Deft. at Lewisburg.
Nov. 24	5—PETITION & WRIT—of H.C. Ad Pros. to produce Deft. at Wmspt. on 12/2/75 for Arraignment at 11:00 AM. 2 cc US Marshal (M)
Dec. 2	6—MINUTE SHEET—Atty. Humphrey requested Deft. be placed in Union County Jail for his safety. Atty. for Dist. to file proper motion. Trial Date set for 1/6/75 for jury sel
Dec. 2	1A—PLEA—NOT GUILTY.
Dec. 3	8—ORDER—appointing Atty. Humphrey on 12/2/75 copy to Wash.D.C. (M)
Dec. 12	12—TRIAL LIST—placing case #3 on Jan. 1976 list.

DATE	PROCEEDINGS
1976	
Jan. 6	16—PROPOSED VOIR DIRE—questions.
Jan. 6	17—MINUTE SHEET—of jury selection. Jury selected not sworn. Case to be tried in Jan.
Jan. 6	18—JUROR LIST—12 jurors, 2 alternates.
Feb. 5	25 MINUTE SHEET—of 1st day of jury trial. Pltf. and Deft. present case.
Feb. 6	26 MINUTE SHEET—of 2nd day of jury trial. Counsel close. Court charge. Deliberations 12:30 PM to 4:15 PM. Guilty Verdict. presentence ordered. Sentencing set for 2/27/76 at 1 PM at Wmspt.
Feb. 6	27 VERDICT—Guilty.
Feb. 12	31 NOTICE—of Clerk to counsel of record: Sentencing set for Friday, Feb. 27, 1976, 1 P.M. at Wmspt., Pa. Copies to U.S.Marshal, U.S.Prob. Scrn and Lewis; Deft and Warden, Lewisburg Pen.
Feb. 13	32 MOTION—of Defense for new trial, and CERTIFICATE—of service.
Feb. 17	34 PETITION & WRIT—to produce deft. for sentencing on 2/27/76 at 1 PM at Wmspt. 2 cc U.S. Marshal.
Feb. 23	35 NOTICE—of Clerk to counsel of record: sentencing set for Friday, March 12, 1976, 12:45 P.M. at Wmspt. Pa. Changed at request of Prob. Officer Copies to Marshal, Prob., Warden MCC, N.Y., Deft. and Atty Humphrey
Feb. 25	38 PETITION & WRIT—of habeas corpus ad prosequendum for deft. to appear on 3/12/76, at 12:45 at Williamsport to be senenced. (M) 2 cc U.S. Marshal.
Mar. 12	43 MINUTE SHEET—of Sentencing. Deft. advised of right of appeal.

DATE	PROCEEDINGS
1976	
Mar. 12	44 COURT REPORTER—notes of sentencing.
Mar. 12	45 JUDGMENT & COMMITMENT—Deft. committed to imprisonment for 2 years. The sentence shall begin at the expiration of any sentence or sentences the defendant is now serving or for which he is being held. (M)
Mar. 23	47 BRIEF—in Support of Defendant Motion for New Trial, C. of S. copy to Court.
Apr 5	49 BRIEF—of U.S. Atty. in opposition to deft.'s motion for a New Trial and C. of S. C. Ct.
Apr. 8	50 NOTICE RETURNED—on Sentencing change of date. Marked "Deft. not at FCI, Sandstone, Minn."
Apr. 12	DEFT. COPY OF JUDGM. & COMMITMENT—back to Sandstone, Minn. on info. of Marshall.
Apr. 22	51 MARSHAL'S RETURN—of Judgment and commitment, delivered deft. to FCI Sandstone, Minnesota.
Apr. 30	52 ORDER—Motion for a new trial is denied. (M) Copies to counsel from Wmpst.
May 4	55 APPEAL—in forma pauperis filed by attorney for deft. appealing the Order of the Court dated April 30, 1976 denying Defendant's motion for New Trial, and from the sentence imposed on March 12, 1976. copies to Court of Appeals, Court, U.S.Atty, Marshal, Prob., Deft., Atty. Humphrey.
May 6	RECORD ON APPEAL—together with Notice of Appeal mailed this date to Court of Appeals. Doc. #9 and 44 not included, Court Reporter Notes.
May 17	57 RECEIPT—for record on appeal.
May 28	FIRST SUPPLEMENTAL RECORD—on Appeal mailed. Consists of Docs. 56, 58, and 59. (Doc. #57, receipt, not incl.)

DATE	PROCEEDINGS

1976

June 21 60 RECEIPT—for First Supplemental Record on Appeal.

June 24 61 TRANSCRIPT—of sentencing of 3/12/76.

June 25 SECOND SUPPLEMENTAL—record on appeal mailed consisting of Doc. 61.

July 26 63 RECEIPT—of second supplemental Record on Appeal received

1977

Jan. 17 64 OPINION—Sur Panel Hearing from Ct. of Appeals. Sept. 16, 1976 Judgment of District Court affirmed. On Oct. 15, 1976 Judgment Vacated and Petition for Panel Rehearing granted Oct. 15, 1976. Submitted for Rehearing under Third Circuit Rule 12(6) on 10/15/76. Opinion filed Jan. 7, 1977 reversing District Court and Remanding with directions that Grayson's sentence be vacated and that he be resentenced by the district court without consideration of his alleged false testimony given at trial. WM 1/18/77

Jan. 31 65 ORDER AMENDING SLIP OPINION—The second sentence of last para. on page 21 of slip opinion shall be amended to read "I am not suggesting that a judge who sentences a deft. for an underlying offense should indiscriminately impose some increment because the deft. has testified falsely. (Rosenn) copy to Judge Muir.

Mar. 28 66 JUDGMENT ORDER of 1/7/77.—(certified copy) from Ct. of Appeals reversing the judgment of 3/12/76 of the District Court. The cause is remanded to the district court with directions that Grayson's be vacated and that he be resentenced by the district court without consideration of his alleged false testimony given at trial, in accordance with the opinion of this Court. Certified as a true copy and issued in lieu of a formal mandate on 3/25/77.
copy to Judge Muir.

DATE	PROCEEDINGS

1977

Mar. 28 CASE FILE RETURNED FROM CT. OF APPEALS.

Apr. 4 67 LETTER—from U.S. Atty. to Court requesting that resentencing be deferred for at least 30 days, pending Govt. decision to file Petition for Certiorari.

Apr. 4 68 LETTER—from Deft. counsel opposing extension of time for resentencing, and requesting another pre-sentence conference.

Apr. 6 69 ORDER—the sentencing in the above case is set for Friday Apr. 29, 1977 at 12:15 PM in Wmpst, Pa.
In the event that the Government files a petition for certiorari with the Supreme Court of the U.S. on or before 4/28/77, the sentencing shall be postponed until the matter is disposed of by the U.S. Supreme Court. (M) copies counsel, U.S.Marsh, U.S. Prob., Deft.

Apr. 14 70 REQUEST—of U.S. Atty. to Court to continue the sentencing indefinitely, since Petition for Certiorari will be filed on or before 5/16/77 with the Supreme Court by the Govt.

Apr. 14 71 ORDER—the motion of U.S. Atty. for continuance of the sentencing indefinitely is denied. (M)
copies to counsel of record.

Apr. 15 72 LETTER—from deft. counsel objecting to govt. continuance request.

Apr. 18 73 LETTER—from US Atty. to Court stating that since deft. is now serving another sentence, an early resentence would be meaningless, and that the district court should not do anything to preempt the action of the Supreme Court.

Apr. 20 74 WRIT OF H.C.AD PROS.—to produce Deft. at Wmspt. on 4/29/77 at 12:15 PM for resentencing. (M) copies U.S. Marshal, Lewis.

DATE	PROCEEDINGS

1977

Apr. 25 75 NOTICE—fixing RE-SENTENCING for 4/29/77 at 12:15 P.M. at Wmsp. cc to all concerned.

Apr. 29 76 US MARSHAL'S—Return of service on Writ of H.C. Ad Pros, stating, "On this 27th day of April, 1977, returned above writ unserved as case continued".

May 2 77 ORDER—(cert. copy) from Court of Appeals. Upon Consideration of the petition of the U.S. for recall and stay of mandate in the above entitled matter, It is ORDERED that the mandate of this court is herewith recalled and its reissuance is stayed for a period of 30 days. If during such period the U.S. files with the Supreme Court of the U.S. a petition for a writ of certiorari, the stay of the reissuance of the mandate shall continue until disposition of the proceedings in the Supreme Court. Dated 4/26/77. cr Court, U.S. Atty., Marsh, Prob.

May 4 RETURN OF—CERTIFIED JUDGMENT in lieu of Formal Mandate issued on 3/25/77, to the Court of Appeals per request of letter of 4/26/77 attached to Doc. #77.

May 4 78 TRANSCRIPT—of two days of jury trial, Feb. 5 and 6, 1976.

Sept. 26. 79 APPLICATION—of defense for Bail pending Appeal and Resentencing, and C. of S. copy Court.

Sept. 28 80 ORDER—Grayson's application for bail pending appeal and resentencing is denied. (M) copies counsel of record.

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Criminal No. 75-221

UNITED STATES OF AMERICA

vs

TED R. GRAYSON

Williamsport, Pennsylvania
February 5 & 6, 1976

BEFORE: HONORABLE MALCOLM MUIR, and a jury.

APPEARANCES:

For the United States:

Harry A. Nagle, Asst. U.S. Atty.
P. O. Building
Lewisburg, Penna. 17837

For the Defendant:

John H. Humphrey, Esq.
Fidelity Nat'l. Bank Building
Williamsport, Penna. 17701

[18]

• • • •

THE COURT: I told you originally, Ladies and Gentlemen, that there were various classes of evidence. Counsel in this case have agreed or stipulated to certain facts, and the purpose of the agreement reduced the number of witnesses to be called and reduced the amount of time expended by you in the trial of this case.

They have agreed to the following facts:

The Defendant was convicted in the United States District Court for the Eastern District of New York of a crime; that he was sentenced by a judge at the United

States District Court for the Eastern District of New York to the custody of the Attorney General; that the Federal Prison Camp at Allenwood was designated by the Attorney General of the United States as the institution for the service of this sentence by the Defendant; that the Defendant was committed to [19] the Allenwood Prison Camp by the Attorney General of the United States or his designate, on August 29, 1975, pursuant to that conviction in the United States District Court for the Eastern District of New York; that the Defendant left the custody of the Attorney General of the United States, or his designate, on October 11, 1975, the date charged in the indictment, and that the Defendant left the custody of the Attorney General and the Allenwood Prison Camp on October 11, 1975 without permission.

Now is that a fair statement of what was agreed upon, Mr. Nagle?

MR. NAGLE: Yes, your Honor.

THE COURT: Mr. Humphrey?

MR. HUMPHREY: Yes, your Honor.

THE COURT: Very well.

• • • •

[20] EDWIN H. PETERSEN, witness called, being duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY THE COURT:

Q How do you spell your name?
A P-e-t-e-r-s-e-n.
Q Your first name?
A Edwin.
Q Do you use a middle initial?
A Edwin H.
Q What is your occupation?
A I am employed as a special agent for the F.B.I. assigned to the New York office.
Q And how long have you been a special agent for the [21] F.B.I., Mr. Petersen?
A Approximately six and a half years.

THE COURT: Thank you.

BY MR. NAGLE:

Q Mr. Petersen, you are assigned to the New York City office of the F.B.I., is that correct?
A Yes, that is correct.
Q And were you working on that assignment in New York City on or about October 11, 1975?
A Yes I was.
Q And shortly after October 11, 1975, did you receive any information about an alleged escape of one Ted R. Grayson from the Federal Prison Camp at Allenwood, Pa.?
A Yes I did.
Q And in the course of your duties as a special agent of the F.B.I. in New York City, did you have an occasion to do any investigation as to the where abouts of Mr. Grayson?
A Yes.
Q And what information did you receive as to the possible where abouts of Mr. Grayson which initiated your investigation?
A Well, the Philadelphia Division had sent us a communication saying certain leads for us to cover, one of which was to interview relatives and another to conduct an [22] investigation at I believe 4 Park Avenue, New York City. And upon conducting this investigation we went to the address of 4 Park Avenue, New York City, and went to a certain apartment, according to the communication, and identified ourselves to the people inside this apartment and eventually located an individual who resembled the photograph we had of Mr. Grayson.
Q And did you speak to this individual?
A Yes we did.
Q Did you attempt to obtain his identity?
A Yes we did, and he had no identification on him, no wallet, no identification.
Q Did you ask him what his name was?
A Yes.
Q What did he say?

MR. HUMPHREY: Your Honor, I would object to this. Perhaps we better approach side bar.

THE COURT: All right.

(At side bar.)

MR. HUMPHREY: I don't see the relevance of what conversations with Mr. Grayson being had are? There was no statement made as far as I am aware, and of course he has a right to remain silent, I think, short of an admission that any conversation between the agent and Mr. Grayson which is relevant in this case.

[23] MR. NAGLE: Your Honor, I believe the question raised has to do with a Miranda-type situation. We are not attempting to get into that.

THE COURT: You are now?

MR. NAGLE: We are not attempting to get into that. The Defendant was advised of his rights but did not make any statement. I don't think that is an issue in this case.

On request by a police officer to have a person identify himself is beyond, as I understand it, the Miranda rule. The police officers are entitled to ask and receive a person's identification in the course of an investigation; and as long as it doesn't go beyond name and address, it is properly admissible. It is relevant to this case in view of the opening statement of the Defense that he left because of his own protection. And after leaving Allenwood on the 11th of November, two full days later, some several hundred miles later, in New York City when he was approached by people and the F.B.I. and refused to admit an identity, therefore continuing his escape status after he had been removed from the alleged danger at the camp; and even assuming that there was some compulsion—I'm not saying there was—but [24] assuming there was some compulsion for him to leave the camp, once he leaves the camp and makes a decision to stay out, that is an escape.

THE COURT: Well I think that the evidence is probably admissible, but I am troubled as to whether it should now come in the case or whether it should be rebuttal evidence.

MR. HUMPHREY: Your Honor, with that observation I would withdraw my objection and permit this evidence concerning any failure of Mr. Grayson to identify himself.

MR. NAGLE: I think it should come in now for the reason, your Honor, that it is part of the Government's case in chief that the escape was started and was a continuing escape. The opening statement made is relevant to the Government's case in chief.

THE COURT: All right. He withdraws the objection.

(In open court.)

BY MR. NAGLE:

Q Now did you attempt to obtain identity from the Defendant?

A Yes.

Q What response did you get from him?

[25] A We asked him if he was in fact Ted Grayson, and he denied he was Ted Grayson.

Q He denied he was Ted Grayson?

A Yes.

Q How many times did he deny it, once or more than once?

A It was several times. And based on our observations of the photograph, or the telephoto, or the copy that we had, we felt there was strong enough resemblance that this was the individual who was identical to Ted Grayson.

Q Now when did you have any recollection of the moment, the time, and the hour that this confrontation between you and Mr. Grayson occurred or began?

A You mean the time that we had entered the apartment and had confronted him?

Q Yes?

A I would have to say it was approximately 10:15, somewhere in that area.

BY THE COURT:

Q In the morning?

A Yes, your Honor.

BY MR. NAGLE:

Q When did your visit with Mr. Grayson conclude?
A I would say approximately 15 or 20 minutes thereafter.
[26] Q In the apartment?
A Yes.
Q Now after you left the apartment, where did you go?
A We brought him back to the New York office of the F.B.I.
Q And you were in the car with him?
A Yes I was.
Q I don't know if I covered this point: who was with you, who accompanied you to this apartment?
A Special Agent Donald Bullard.

BY THE COURT:

Q Bullard?
A Yes, your Honor.

BY MR. NAGLE:

Q He was a special agent of the Federal Bureau of Investigation at that time?
A Yes, at that time.
Q He has since retired, is that correct?
A Correct.
Q While you were at the apartment, were you and Mr. Bullard in each other's company and the Department's company?
A Most of the time, yes.
Q Now were you and Mr. Bullard and the Defendant in the same car when you left the apartment?
[27] A Yes.
Q Where did you go to in the car?
A We returned to the New York office of the F.B.I.
Q And you took the Defendant with you?
A Yes.
Q Did you make any attempt in the car to obtain Mr. Grayson's identity?

A We asked him again, and he stated that he wanted to contact an attorney, and we didn't pursue it any further.
Q You took him down to your office?
A Yes.
Q What happened there?
A Well we told him we would make arrangements for the necessary photographing and for fingerprinting, and we felt pretty strongly that he was in fact identical to Ted Grayson. And we told him thereafter he would be remanded to the custody of the United States Marshall at the Manhattan Correctional Center.
Q Now Mr. Petersen, did you tell the Defendant when you first met him that morning whether or not he was suspected as being Ted Grayson, the escapee, from Allenwood?
A Yes, we stated the charges, right.
Q And he denied being Ted Grayson?
A That is correct.
Q You had a flyer? Do you have it with you?
[28] A Yes I do.
MR. NAGLE: Your Honor, I will mark this as Government exhibit 2 and show it to counsel for the Defendant.

(Handed to Defense counsel for review.)

BY MR. NAGLE:

Q I show you what has been marked for identification as G-2. What is this?
A This is the flyer we had received through our Philadelphia office.

(Flyer with photo of Grayson—produced and marked for identification as Government exhibit No. 2.)

BY MR. NAGLE:

Q This is a xerox copy of a bulletin, is that correct?
A That's correct, with a copy of a photograph of Ted R. Grayson.

Q At the top it says U.S. Prison Camp, Allenwood?
A That is correct.
Q Then there is information regarding the escapee, is that correct?
A Yes, personal description and background data.
Q Did you have that with you when you met Mr. Grayson in the apartment?
[29] A Yes, this is what we used for identification.
Q Did you take it out of your pocket and hold it up like you are holding it now?
A Yes.
Q In front of Mr. Grayson?
A Yes, I had it in my hand while I was looking at Mr. Grayson.
Q And you asked him if he was Ted R. Grayson?
A Yes.
Q What was his response?
A He denied it.
Q And because of the similarity in the photograph you took him anyway?
A Yes.
Q For interrogation?
A Yes.
Q Is the Defendant the man that you met in the apartment that morning seated here today?
A Yes he is.
Sir?
THE COURT: It would be better if you didn't ask me any questions.
He was about to ask me a question, Mr. Nagle, and I was concerned that there might be something in the question that would be improper for me to hear.
[30] You are at liberty to discuss the matter with him if you wish privately.
MR. NAGLE: All right.
Your Honor, I would move for the admission into evidence of the top half of Government exhibit No. 2, eliminating the bottom half which has to do with matters which we discussed at side bar.
MR. HUMPHREY: What is the top half?
MR. NAGLE: Above this, from there up.

MR. HUMPHREY: I have no objections.
THE COURT: Well we will admit the top half.
MR. NAGLE: I will draw a line there.
THE COURT: Please do that so there is no dispute about what is being admitted.
Do you want to take a look at this, Mr. Humphrey? Mr. Nagle just drew a line as to what is admissible and what is not.
MR. HUMPHREY: I have no objections.
THE COURT: I suggest before the jury retires to the juryroom to deliberate that you ask the Clerk to fold that document at the point where you have a line and make a photocopy of it so that the jury can take that out.

Government exhibit No. 2, having been previously identified, was received into evidence, as amended.

[31] BY MR. NAGLE:

Q Up until the time you arrived at your headquarters office in New York, you and Mr. Bullard and the Defendant were together, is that right?
A That's correct.
Q When you arrived at your office, was there an occasion when you left the room in which the Defendant was present?
A With Mr. Bullard?
Q Yes.
A Yes.
Q So there was a time when you were out of the Defendant's presence and out of Mr. Bullard's presence?
A Right, that's right.
Q How many other people were in the Department when you and Mr. Bullard arrived over there?
MR. HUMPHREY: Your Honor, I don't think that is relevant.
THE COURT: Why is it relevant, Mr. Nagle?
MR. NAGLE: The purpose of the inquiry, your Honor, is on the further testimony of the Defendant's reluctance to give up his identity.

THE COURT: Well I don't understand how the number of people there has anything to do with the reluctance to [32] identify himself.

MR. NAGLE: Well your Honor, it is a preliminary question as to whether or not any of the other people identified him in any way.

THE COURT: I am going to sustain the objection as to the number of people because I don't think that does prove the case one way or the other, just as to the number.

BY MR. NAGLE:

Q Did you question the other people present in the apartment as to the identity of the Defendant?

A Yes.

Q What did they tell you as to the identity of the Defendant?

A The people that were in that apartment were uncooperative.

Q Uncooperative? In other words they would not tell you who he was?

A No.

MR. NAGLE: No other questions, your Honor.

THE COURT: You may cross examine.

CROSS EXAMINATION

MR. NAGLE: Defense counsel received a copy of this agent's report in the pre-trial discovery.

THE COURT: Very well.

BY MR. HUMPHREY:

[33] Q Now you took Mr. Grayson into custody at 4 Park Avenue, New York City, is that correct?

A That's correct.

Q When was it that he first told you he wanted to talk to a Lawyer?

A I believe at that one point while we were in transit to our office.

Q Did he mention that in the apartment?

A I don't recall.

Q Did you hand cuff Mr. Grayson?

A No, we did not.

Q Did he attempt to escape your custody at any time?

A Well I held him by the arm.

Q At all times?

A Yes, just about the entire time.

Q Was Mr. Grayson, other than his reluctance to tell you who he was, was he in any other way resisting your attempt to place him under arrest, or your taking him under arrest?

A No, I don't think he resisted.

MR. HUMPHREY: I have nothing further.

Excuse me, your Honor.

THE COURT: All right.

BY MR. HUMPHREY:

Q Who drove the car that you took Mr. Grayson to the F.B.I. headquarters in?

[34] A I believe it was agent Bullard. I don't recall. I believe it was Bullard, though.

Q You are not sure?

A No.

Q In other words it could have been you driving that car?

A I seem to think it was agent Bullard. I'm not sure, though.

MR. HUMPHREY: All right. Nothing further.

THE COURT: Mr. Nagle, any redirect?

MR. NAGLE: No, your Honor.

THE COURT: All right. You may step down, sir. Thank you.

(Witness excused.)

• • • •

[35] DONALD E. BULLARD, witness called, being duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY THE COURT:

Q Your last name is Bullard?
A That's correct.
Q B-u-l-l-a-r-d?
A That's right.
Q What is your first name?
A Donald. Middle initial E.
Q E as in Edward?
A Yes.
Q Were you sometime a special agent of the F.B.I.?
A I was.
Q And you are now retired?
A Yes I am.
Q Where was your last station?
[36] A New York City.

THE COURT: Very well.

BY MR. NAGLE:

Q Now Mr. Bullard, you are now retired, is that correct?
A That's correct.
Q When did you retire?
A November 7th.
Q On October 11, 12 and 13 of 1975 you were employed as a special agent of the Federal Bureau of Investigation at the New York headquarters office, is that correct?
A I was.
Q And did you work with the previous witness in this case, Mr. Edwin Petersen?
A Yes sir, I did.
Q And did you, together with Mr. Petersen, conduct an investigation into the whereabouts of one Ted R. Grayson, who was alleged to be an escapee from the Allenwood Prison Camp?
A I did.
Q And did you go with Mr. Petersen to the apartment at 4 Park Avenue, New York City on the 13th of

October, 1975, for the purpose of investigating the whereabouts of Ted R. Grayson?
A I did.
[37] Q And did you find him there?
A Yes I did.
Q Now will you tell the Court and jury whether or not the Defendant was found there?
A I beg your pardon?
Q Was the defendant found at that apartment?
A Yes he was.
Q And was he questioned as to his identity?
A He was.
Q And what was his reply?
A He denied being Ted Grayson.
Q He denied being Ted Grayson?
A That's correct.
Q Was he later removed from that apartment and taken to your headquarters office?
A He was.
Q Now when did you first find out that he was Ted Grayson?
A Well I had suspicions of him being Ted Grayson on his resemblance of the photograph, the facsimile to the person. I didn't find out positively from his own admission until he made a phone call to his attorney and he identified himself on the phone to his attorney.
Q Will you tell us the words used in the phone call up to that point?
[38] A "This is Ted Grayson" he was advised of his rights in which he was told he had a right to have an attorney, and he said I want to call an attorney. He furnished a number and he called an attorney, and at that time he mentioned his name.
Q He said it on the phone?
A He said this is Ted Grayson, yes.
Q Up until that time had he ever admitted to you or to Mr. Petersen that he was Ted Grayson?
A No.
Q Did he admit his identity after the phone call?
A No, he didn't discuss it any further.

Q But he identified himself to the other person on the telephone as Ted Grayson?
A That's correct.
Q And is that person here in Court, the Defendant?
A I beg your pardon?
Q Is the man you arrested as Ted Grayson, is he here in Court?
A Yes he is.
MR. NAGLE: That's all.
THE COURT: Cross examine.

CROSS EXAMINATION

BY MR. HUMPHREY:

Q In your opinion is this the photograph and did it look like the Defendant at the time you made the arrest at 4 [39] Park Avenue?
A He was a resemblance.
Q Did Mr. Grayson say I am not Ted Grayson, or did he say sometuhing to the effect that I'm not saying whether I am Ted Grayson or not?
A He woldn't admit being Ted Grayson. Actually to his words as to that I don't recall.
Q You're not saying for sure that he said I am not Ted Grayson, is that correct?
A He was asked if he was Ted Grayson, and he denied being Ted Grayson. He wouldn't identify himself.
Q By denying it did he say no, or did he say I am not saying? I mean did he deny that he was Ted Grayson or did he say or refuse to admit that he was Ted Grayson?
A Well at the time in the room up there, he denied being Ted Grayson. At the time in the office he just refused to discuss it any further.
Q Did Mr. Grayson resist arrest of him in any way?
A No.
Q And after leaving 4 Park Avenue, did you take him in the car to the F.B.I. headquarters?
A Ultimately we went to the F.B.I. headquarters, yes.
Q Who drove the car?

A I am not certain. I think it was Petersen. I'm not sure.
[40] Q Were you sitting in the rear seat with Grayson?
A I believe so, yes.
Q Did you have him hand cuffed?
A Yes, I believe so.
MR. HUMPHREY: I have nothing further, your Honor.
THE COURT: Mr. Nagle, any redirect?
MR. NAGLE: No further questions.
May this witness be excused?
THE COURT: You have no further questions?
MR. NAGLE: No sir.
THE COURT: All right. You may be excused. Thank you.

(Witness excused.)

• • • •

[42] TED GRAYSON, witness called, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HUMPHREY:

Q State your name please.
A Ted R. Grayson.
Q And you are the Defendant in this case?
A I am.
Q And you heard the stipulation which was entered into that you were in the lawful custody at the Allenwood Prison Camp and that on October 11, 1975, you left the Allenwood Prison Camp without permission, is that correct?
A That is true.
[43] Q What time did you leave the Allenwood Prison Camp on October 11th?
A A few minutes after a count.

BY THE COURT:

Q I couldn't hear you.

A A few minutes after one of the correction officers counted his inmates in the dorm.

BY MR. HUMPHREY:

Q Do you know approximately what time that was?
A Approximately 9:30.
THE COURT: I'm sure that Mrs. Stover and the jury didn't hear that.
Did you hear that?
MRS. STOVER: No.
THE COURT: You must speak loudly enough so that everybody can hear what you are saying.
THE WITNESS: About 9:30.

BY MR. HUMPHREY:

Q Is that p.m.?
A Yes, in the evening.
Q And why did you leave?
A I had just been threatened with a large stick with a nail protruding through it by an inmate that was serving time at Allenwood, and I was scared, and I just ran.
Q Now is it difficult to escape from Allenwood?
[44] A No it is a minimum security honor camp with no wall around it or anything to restrain the prisoners or keep them in.
Q Please speak up.
A It is a minimum security camp with just a fence around, no wall or anything to restrain the inmates. It is an honor camp.
Q Are there substantial numbers of guards around?
A In the evening I believe there are only two guards on the grounds, and one guard in the control center. It is just a skeleton crew in the evening.
Q Now when were you committed to Allenwood?
A August 29, 1975.
Q And when you were committed there, when you were first committed to the Federal custody, did you have to give any information about yourself, any address?
A Oh, sure.
Q What did you give as your home address?

A Four Park Avenue, New York City.
Q Was that your residence?
A Yes it was. I also had personal belongings that I had at the time I was sent to that address by the federal system.
Q Now I also want to get into the events leading up to October 11 when you state you were threatened, and I would [45] ask you what was the first thing that occurred or happened to you at Allenwood that led to this incident of October 11th?
A I had gotten involved in a poker game, and I lost what is currency between inmates or cigarettes and I had lost quite a few cartons of cigarettes.
Q When was this poker game?
A About two or three weeks prior to when I left, two and a half weeks. That was the problem that arose from it.
Q Would this be approximately a month after you first got to Allenwood?
A A little less, about a month.
Q And you stated that the currency between prisoners was cigarettes. How many cigarettes did you lose in this poker game?
A Forty cartons.
Q And to whom did you owe forty cartons?
A There was a dealer, the house is the term, and I owed them to him.
Q And how many people were involved in this game?
A Originally four and then it dropped down—well four and the dealer, five, then four because one person dropped out, and the game continued, and there was the four of us.
Q And did you owe these 40 cartons of cigarettes to the dealer, then?
[46] A To the dealer and the people who were playing. If they were owed cigarettes it was up to the dealer to pay them.
Q But you ended up owing the dealer cigarettes?
A Yes.
Q What was the dealers name?
A His nickname was Sarge. That's what I knew him as. Later on I found out that his last name is Barnes.

BY THE COURT:

Q I can't hear you. Later on you found out his last name was Barnes?

A Yes, your Honor.

BY MR. HUMPHREY:

Q Why do you deal in cigarettes? Why is that the mode of currency that you were familiar with?

A Inmates aren't allowed to have cash. Any cash that an inmate may receive is put in a commissary account so that it is just on paper. It is on the books for that inmate so that they can purchase things from the store. So the most valuable commodity is cigarettes.

Q And how do you spend this money in the commossary account?

A Once a week you are allowed to go to the commossary store that is in the complex. It is on the grounds, and you can purchase, within certain regulations, a certain amount of money each week, I think it is $45 a month that an inmate is [47] allowed to spend, four cartons of cigarettes per week as a maximum. And you purchase them and sign a receipt that you spent that much money, and it is deducted from your account.

Q I take it that you don't actually get money to give to the person at the commossary, but it is actually a paper transaction, is that correct?

A Yes. Money is contraband.

BY THE COURT:

Q What does a carton of cigarettes cost at the commossary?

A Thirty cents a pack, or about $3 a carton.

Q Three dollars a carton?

A Yes.

BY MR. HUMPHREY:

Q Now did you pay Sarg, Mr. Barnes, this debt of 40 cartons of cigarettes?

A I started to pay him. The ruling that I can only purchase at a time four cartons of cigarettes a week

made it impossible to pay him at one time, plus I didn't have that much money in my account at that time.

Q Did you make a payment to him?

A Yes I did.

Q And what did you give him at that time?

A I give him 35 packs of cigarettes, and he told me to purchase Kool cigarettes which is what he smokes, and I [48] purchased them for him. Also I purchased crackers and other ediables, candy, cake.

Q Now you say you gave him other edibles. Was this his request or did you just give those to him in lieu of cigarettes?

A He kind of took them, and he didn't push me out of the way and grab them, but my locker was open and I was paying him the cigarettes, and he said I also want this and this. And I just recorded what he was taking and the amount of money that each item cost, and I added it up. I didn't argue with him.

Q Now did you make the purchase of these goods at one time, the cigarettes and the other edibles that you discussed?

A I made two purchases. The first was one week. And since the maximum of cigarettes I could purchase was four cartons, I didn't deplete my funds in my account, and the following week I spend the balance and purchased cigarettes again.

Q How soon after the poker game did you make this first payment to Sarge?

A About a week.

Q Now you say you gave him 35 packs of cigarettes which is three and a half cartons?

A Yes.

[49] Q That left a substantial debt still existing. Was anything said about that debt?

A I expected the poker game to continue. When the game had started, the dealer and the two people were friends, and I didn't even suspect that there was any cheating or anything like that, and as the game proceeded —I'm not a great poker player, but I'm not a poor card player, and I kind of felt that they were cheating. I suspected they were. And the debt, I had run it up to 180

cartons of cigarettes and continued to play and won back 140 cartons. And they stopped the game.

And I am fairly confident that if the game had continued, I would have been able to win back my losses. I was watching them and looking for somebody hiding a card or—different games at different rules, and there is ways to cheat. And they never played again. He kept saying that he was going to put the card game together again, and I would be able to play, but he never did.

Q Now then again after this initial payment to him, did Sarge request the balance of the payment?

A Yes, but he told me that he wanted cash, which is against the rules, but it is more valuable than cigarettes of course.

Q Why is cash valuable if you can go into the commissary and purchase things?

[50] A There is certain contraband that is desirable. Alcohol and things like that cannot be purchased with cigarettes and somehow or other are smuggled into the camp. And the only way to purchase items like this are with cash. Cigarettes won't purchase them. So cash is more valuable.

Q You say that Sarge asked you for cash. Did he say how he expected you to get this cash?

A Yes, he wanted a visitor, a girl friend that was visiting me, to smuggle the money—to hand it to me and then have me smuggle it in. And I told him no, that I wouldn't do it, that I would pay him in cigarettes in time, giving him 35 packs each week until I paid the balance. And he insisted that he wanted cash. And I argued that the game was for cigarettes. That is the way I should be able to pay off that way. That is the explanation.

That particular day that he demanded cash, he was with his two friends that were at the card game with him, and he pushed me up against the wall, grabbed me by the hair and told me that I would pay him, and I would pay him in cash.

I probably said yeah, ok, you know, what ever you say, and that was the end of that.

Q Well, after you initially said then that you weren't going to pay him in cash, what happened after that in

the days that followed? Was there any other pressure put on you?

[51] A We didn't sleep in the same dorm, you know. And he worked at a different job than I did, so we didn't see each other all the time. It was just after certain hours that we were exposed to each other. And he made remarks such as I will pay him, and it would be cash. And at that point I don't think I was arguing whether it was going to be cash or not. I just expected either the poker game to continue or to be able to pay him with cigarettes, which is what I really expected to do. And he said something to me that I would pay him or not to be there. Pay me or don't be here.

Q Do you know when that was?

A That was the day that I left. When he told me that he wanted cash from me and threatened me with this stick. It is a board, a board, two days later. It was only two days.

Q When was the first time he actually physically touched you concerning this debt?

A I left Allenwood Saturday, so it was Thursday, two days prior to when I left.

Q October 9?

A Yes.

Q And did you tell him at that time that you were going to pay him?

A I might have led him to believe that I was.

Q And when was the next time that you and he had a confrontation?

[52] A The next time, you know, he didn't hurt me.

Q On October 9th, he didn't hurt you?

A No, he didn't. But on the 11th he actually punched me and pushed me up against the wall. And I was attempting to protect myself and block his blows.

Q Where did this fight take place?

A The front part of the dormatory building.

Q What dormatory is that?

A It houses 2, 5 and 6.

Q And what led him to stop this scuffling, or this fight, with you?

A It was in front of the whole camp. The officers were walking around in the compound. People were coming into the dormatory, and it was in front of the window. I kept moving in that direction to keep myself in view for my own protection.

Q Now approximately what time was this?

A 3:30. It was just after I had a visitor and I just came back from the visiting room, and he wanted, you know, do you have cash for me? I think that is what he said. And he was taking off his watch as he said this. And I said no.

Q Did you give him anything?

A I had a ring, a gold ring, that I took off and gave him.

Q Did he accept that as payment?

[53] A He grabbed it out of my hand and laughed and said well, I can't do anything with this, and hit me.

Q Did he give the ring back?

A No he didn't.

Q Now did something occur between you and Sarge later on that evening?

A Yes. He entered the dormatory. The dormatory has an entrance in the back and an entrance in the front, and he came in through the back. He had a long board about this long with a nail protruding through it. And he walked over to my bed—I was laying down and reading—and lifted the board and told me to come with him, held it over his head and said come on with me.

I got up off the bed and started to walk out the dormatory panicking. I just, you know, I was looking for a place to run. There were two other guys standing at the back of the dormatory, and one of them said to him, hey Sarge that is not very cool, you know, what you are doing. And somebody hollered "Count". It was count time. And between the two remarks it was enough. He wasn't going to hit me while the officer was coming in, or even to be caught with a board in his hand, and he went outside the dormatory and just left.

Q Who were the two individuals that you said saw this?

A Quite a few people saw it.

[54] Q Do you know any of their names?

A The first names, I know some of their first names, one fellow's name was Charlie. I know the fellow that slept next to me, Richard Ventrola. I know his last name. I tried to get in touch with him. I haven't been able to. Some of Sarge's men were in the dormatory at that time.

Q Well what was your feeling? How did you feel at this time when he had this board?

A He had said, prior to the board incident, it was when he had hit me, something about inmates being stabbed in their sleep for debts such as this. It is not a new thing. It wouldn't be the first time this has happened. And I either pay him or not be there.

And when he came in with the board, I couldn't believe it was happening first of all. And I kind of felt well as long as I am in the dormatory in front of everybody, he is not going to hit me with the board. When he told me to get up and come on and go outside the dormatory threatening me with the board, when I was walking in front of him towards the door I was thinking not to go outside of the dormatory because once I did, it was getting dark—in fact it was dark out there—and there would be nobody to see it. I was scared. I was just—I'm sure I wasn't, you know, rational or anything. I was scared.

Q You said one of the reasons that he departed was [55] someone had yelled "count". Was in fact a count made at that time?

A Yes.

Q And what did you do following that count?

A I left Allenwood. I grabbed my coat and ran.

Q Did you take anything else with you?

A No.

Q Did you take any of the property out of your locker?

A No.

Q How come you didn't?

BY THE COURT:

Q Did you answer that question?

A Yes, your Honor. I did not take anything.

THE COURT: All right.

BY MR. HUMPHREY:

Q How come you did not tell the officer making the count that your life had just been threatened?

A For several reasons, and I thought of that afterwards, you know; but perhaps I should have handled the problem another way. At that time first of all I was just so scared, and there was only two guards that walk around at night. And there is no lock up facilities there. There is no security facilities at Allenwood. Everything is open. There are no bars or anything like this.

[56] And there would be no place for the officer to put me. Plus I felt that they probably get stories from inmates all day long about problems like homosexual problems, their lives being threatened, that he probably would have said to me, well, go to sleep and I will keep my eye on you.

Well there are 400 inmates at Allenwood with two officers and eight dormatories. I felt that if I had gone to sleep, I might not wake up.

Q Were there any of Sarge's acquaintances in your dormatory?

A Yes.

Q Were they anywhere near your bunk?

A Yes. One slept right across from me.

Q How come you didn't take this problem of the pressure being applied to you to the authorities prior to this evening of October 11th?

A It only really became pressure two days before, and it didn't appear to be a threat to my life, you know. I didn't think it would go any further.

I also didn't want to mark myself as being an informer, knowing that I am serving a sentence and that I am going to be exposed to the prison grapevine, I didn't want to put my life further in danger.

At that time my life wasn't in danger, but later on, on Saturday, the day that I left, the thought of turning [57] around and running to a correctional officer and saying, listen this guy is threatening me—I would have had to have done this in front of everybody. And he would have me tagged an informer. And I don't think it would have resolved anything.

Q Now prior to October 11th,—I just wanted to get this straight—how many payments of cigarettes, or whatever, had you made to Sarge?

A Two.

Q You said one was within a week after the poker game?

A Yes.

Q And when was the next?

A The following week.

Q Now when you left Allenwood, and this was right after this count that you referred to?

A Right after it.

Q Where did you go?

A Over the fence to highway Route 15 which is on the other side of the fence, and I stuck my thumb out and hitchhiked to New York.

Q Where did you go in New York?

A I went to my apartment.

Q And where is that located?

A Four Park Avenue.

Q And when did the F.B.I. Agent come and pick you up?

[58] A The following day.

Q Well when did you arrive in New York?

A Early in the morning, late that night.

Q October 12th?

A Yes.

Q And I believe your testimony was that they came to your apartment on the morning of October 13th, is that correct?

A Right.

Q Did you tell them, or did you deny that you were Ted Grayson?

A When I arrived in New York, I called my lawyer and told him what I had done, and I was waiting for the F.B.I. agents, but I was at home waiting for them to come there, knowing that they would come to my address, of course. And he said not to resist arrest or give them any problems, but not to say anything to them, not to tell them anything. So I didn't say no that is not me. I said I am not saying whether it is me or not. Those are my words.

Q Can you explain in a little more detail what this board with this nail in it looked like?

A It was a piece of pine, light wood. It's about an inch thick, three inches wide, and it had a nail through the center of one end. It was about that long. (Indicating.)

Q And how was Sarge holding it?

[59] A Above his head.

Q Did he make a motion to strike you?

A No, he didn't. He held it above his head and motioned me to get off my bed.

MR. HUMPHREY: I have nothing further, your Honor.

THE COURT: All right.

You will have cross examination, Mr. Nagle?

MR. NAGLE: Yes, your Honor.

THE COURT: Well we are past our recess time. We will take, since there are 14 members of this jury, a little longer than usual. We will take a 15 minute recess, and at the end of that time, will you please be back in the jury box.

(Short recess.)

MR. HUMPHREY: I would request to open up direct, your Honor, for just two additional questions concerning events which occurred after October 11th which I forgot to ask on direct examination.

THE COURT: Any objections?

MR. NAGLE: No, your Honor.

THE COURT: Very well.

T. R. Grayson, recalled.

DIRECT EXAMINATION CONTINUED

BY MR. HUMPHREY:

Q Mr. Grayson, did the F.B.I. agent who testified [60] this morning transport you from your apartment at Four Park Avenue to ultimately the F.B.I. headquarters?

A Yes sir.

Q And who was driving the automobile?

A The first F.B.I. agent.

Q The younger man, Mr. Petersen?

A Yes.

Q And you were in the back seat with Mr. Bullard?

A Yes.

Q Were you hand cuffed?

A No I wasn't.

MR. HUMPHREY: That's all.

MR. NAGLE: Your Honor, may we approach the bench?

THE COURT: Yes.

(At side bar.)

MR. NAGLE: Your Honor, I propose to question this witness on his credibility as to his prior conviction, a felony which is a conviction in this state, a violation of Title 21, United States Code 841 (a) (1), which is distribution of controlled substances, on the issue of credibility.

THE COURT: Any objections?

MR. HUMPHREY: Yes, I object. I think that is the type of crime that is not concerned with dishonesty. I don't think it goes to a person's [61] credibility. I think it would be more prejudicial than helpful in impeaching credibility. And on those grounds I would object pursuant to the rule of evidence that controls in this case.

THE COURT: My concern is that the conference report to Rule 609 states in the very last sentence thereof—and I am reading only part of the sentence—"such evidence should only be excluded where it presents a danger of persuading the trier of fact to convict the defendant on the basis of his prior criminal record."

It is my view that honesty or dishonesty, although it might properly be the test, is not the test in light of Rule 609 as enacted and as interpreted by that conference report.

Consequently we will permit the document. It is my view that the evidence of the prior commitment does not present a danger of persuading the jury to convict this Defendant on the basis of his prior criminal record. The

probative value of admitting the evidence of the prior conviction outweighs the prejudicial effect to this Defendant.

All right.

(In open court.)

[62] CROSS EXAMINATION

BY MR. NAGLE:

Q Mr. Grayson, August 22, 1975, you were convicted in the United States District Court for the Eastern District of New York, is that right?

A Yes.

Q And you were convicted of a violation of Title 21, USC 841 (a) (1), which is distribution of controlled substances, commonly known as drugs?

A I don't know if it is commonly known as drugs, but controlled substances, yes.

Q Controlled substance is a technical term?

A Yes.

Q And you received a sentence of three years with a parole eligibility anytime, is that correct?

A Yes sir.

Q You were serving that sentence at Allenwood at the time you left?

A That's true, sir.

Q You say this other inmate who threatened you was Barnes? Was his first name Alex?

A Yes.

Q Would you describe his physical appearance? Is he black or white?

A I saw him today here in the Court house when I was [63] coming in. I remembered him as being taller than as I saw him now. That perhaps was because of the pressure I was under from him. He is very broad. He's got very large bicepts.

Q Is he a black man?

A Yes he is.

Q You remember him as being taller than he actually is?

A I do, yes.

Q So that do you remember anything else differently today?

A No sir. I knew at that time that he was a Korean Army Sergeant and got in trouble with the Government.

Q When did you have this game, poker game, in which you lost the cigarettes?

A Approximately three weeks prior to the day that I ran.

Q Three weeks is 21 days, is that correct?

A Yes.

Q So that would be about the 20th of September?

A Approximately, sir.

Q And when did you tell us that Barnes first started pressing you about this debt?

A The 9th of October.

Q The 9th of October. Didn't you tell us there was pressure put on you as much as two weeks before?

[64] What happened two weeks before?

A The first of those two weeks I paid him three and a half cartons of cigarettes.

Q What?

A I paid him three and a half cartons of cigarettes. The following week I depleted my balance in the commissary and paid him further.

Q On September 30 you withdrew $31.80 from your commissary account, is that correct?

A Yes.

Q That left you a balance of $8.45, is that correct?

A Yes.

Q On or about September 26th you had asked that funds that you had on deposit in the Metropolitan Correctional Center in New York be transferred, didn't you?

A Yes I did.

Q And they were eventually transferred?

A I didn't know that until I saw the document that your office requested for my commissary account. While I was at Allenwood, those funds never arrived.

Q You had over $500 coming to you?
A Yes I did.
Q And you had asked that that be transferred?
A Yes.
[65] Q You had started the mechanics of the physical transfer of the account from New York to Allenwood?
A As I understand it, it is automatic, but I had put in a request to, you know, to find out where my funds were and when they were arriving. Yes I did put the mechanics into effect.
Q You knew that the money would be arriving?
A Yes sir.
Q At least you had reason to believe it would arrive?
A It was my money.
Q Pardon?
A It was my money.
Q You would expect that when you order a transfer of your funds from one account to another, it would be made?
A Yes, I fully expected to have the funds in my account to pay my debt to this Alexander Barnes.
Q So that on October 11, 1975, the date you left the camp, your actual balance in the Allenwood account was depleted?
A I think I had six cents.
Q But you knew that you had over $500 coming to you in the near future?
A Yes I did.
Q That is as soon as the paper work was completed?
[66] A Yes I did.
Q Did you tell Mr. Barnes anything about this, this substantial sum of money?
A I told Mr. Barnes that I would pay him the cigarettes. The pressure, two days before I left when he pressured me against the wall, he was asking for cash, not the cigarettes. Had that not become the situation, I don't think there would have been any problem. When my funds arrived, I would have paid him the cigarettes.
Q The rules of this poker game were for betting of cigarettes?
A Yes it was.

Q So that cash wasn't used in the institution?
A No it wasn't. As I understood the game it was for cigarettes.
Q The inmates were playing the game and were betting or winning or losing cigarettes?
A Correct.
Q Is this something that was understood by the inmates in the game?
A Sir, I hadn't been in the institution very long, and—
Q We're not talking about this particular game.
A As I understood it while I was playing cards.
THE COURT: Just a second, you were both talking at once.
[67] Did you get the question?
REPORTER: Yes, your Honor. I think so.
THE COURT: Well let's read what you've got and then we will start over.

(The record was read.)

THE WITNESS: That was the situation.

BY MR. NAGLE:

Q You knew that the game was being played for cigarettes and not cash?
A Yes.
Q How many other inmates took part in this game besides you and Barnes?
A The part of the game where I was in debt, which would represent two other people other than Barnes and myself.
Q And how many spectators attended the game?
A None.
Q None?
A Not standing around looking, no.
Q How many other poker games had you been in up to and prior to the 11th of October at the Allenwood prison camp where this same format took place?
A Two games, the same people.
Q And it was always the same?
A It was all under the same rules, yes.

Q So that when Barnes made a demand on you of cash, [68] he was going beyond the rules of the game, is that correct?

A Yes he was.

Q Did you talk to any of the other inmates about this? Did you complain that he was changing the rules of the game after the game was played?

A Did I discuss it with other inmates?

Q Any other inmates?

A No sir.

Q You said you did not report this to the people in authority because you were afraid you would be seen, is that correct?

A There were many reasons. I was involved with gambling, which is a violation of a minor rule in Allenwood. Nobody that I know has ever been caught for it. It is known. It is done openly.

Q What happens when an inmate at Allenwood is caught gambling?

A I don't know of any inmate being caught for gambling and prosecuted by the authorities there for gambling.

Q Did you ever go to anyone in authority about any other matters during your short stay at Allenwood?

A I had requested a transfer to the Metropolitan Correction Center in New York.

Q That was in September?

A Yes.

[69] Q And October 1, 1975, you were caught in your bed instead of going to work, is that correct?

MR. HUMPHREY: Your Honor, I object to this. I don't think this is relevant to the crime charged in the indictment.

THE COURT: What is your comment?

MR. NAGLE: I'm not saying it is relevant to the crime charged in the indictment, I think it is relevant to the issue of whether of not the Defendant could have gone to an officer. He had been before the IDC on at least one occasion in the same month.

THE COURT: Well I don't understand. Is it your view that he could have reported it to an officer when he was not working, or something like that?

MR. NAGLE: Without making a display he could have reported it, your Honor.

THE COURT: All right. I will over rule the objection. You may answer the question.

BY MR. NAGLE:

Q You did not get out of bed on October 1 and on October 2 in time to get to work, is that correct?

A Now that you stated the question differently, yes.

Q And you were charged with an administrative violation of not going to work on time?

A No, not appearing for the count. My job had just [70] been changed from 8 o'clock in the morning to a 4 o'clock in the morning job. I was not notified, and as a result I was not there.

Q So you were charged with a violation of the rules of the institution, not a criminal charge.

A Correct.

Q A rule infraction?

A Correct.

Q And you appeared before an institution disciplinary committee, did you not?

A Yes I did.

Q You appeared before them on October 3, 1975?

A Yes I did.

Q Just eight days before this incident?

A October 3rd, yes.

Q You didn't tell them then about any problems you had with any inmates, did you?

A I realize that I am under oath, and of course I will tell you the truth at any rate, I do believe that I phrased the rhetorical question to Captain Kurd, who was in charge of that, and I think I said something if an inmate was being threatened by somebody, what would you do, what would he do? First of all he said he would want to know who it was.

Q Who said this?

A Captain Kurd. I got the impression that we would [71] have, both of us, would have been called in front of Captain Kurd and questioned about the incident.

Q Are you sure it was Captain Kurd?

A I'm not even sure the conversation took place, to be honest, sir. The situation has been very pressing.

Q Isn't it true that that particular conversation did not take place?

A Pardon?

Q Isn't it true, sir, that that conversation you just testified to did not take place?

A It very well might be true, yes.

Q Pardon?

A It might be true, yes.

Q It might be?

A Yes.

THE COURT: I don't understand the answer, Mr. Nagle, primarily because the question had a negative in it. I don't know whether it means that it might be true that the conversation did not take place or it might be true that it did take place. Would you please ask him the question without a negative in it?

BY MR. NAGLE:

Q You say it might be true that the conversation you just testified—

A Yes sir, in reflecting after I left Allenwood.

[72] Q Pardon?

A In reflecting upon thinking about, you know, what I did when I left Allenwood and could I have handled it another way, I might have just thought that I could have done that and could have asked him and what the consequences would have been, what the action that would have been taken would have been; and perhaps the conversation did not take place and that it is just the result of being emotionally upset about the whole incident.

MR. NAGLE: I will mark this document as Government exhibit No. 3 and show it to counsel for the Defendant.

BY MR. NAGLE:

Q I show you what has been marked for identification as Government exhibit 3. This is an incident report dated October 1, 1975, is it not, regarding you?

A Yes, it appears to be.

(Incident report dated 10/1/75—produced and marked for identification as Government exhibit No. 3.)

BY MR. NAGLE:

Q Under section 17 it says, "comments of inmate to committee regarding above incident" it says, "Grayson claims he is working too many hours a day and he can't get any sleep at night due to noisy dormatory."

[73] Is that what you told the committee?

A I don't know how to answer that. I don't remember what I told the committee. I remember what the incident was and the truth of the incident is what I related to you about my job being changed, which I am sure in my records, and that fact can be certified.

If that is what is on the report, obviously that is what I said, or that is what the interpretation was. I didn't plead not guilty to that. I said yes I was not at the count because I wasn't. And so that there was no lengthy discussion regarding the incident.

Q Section 23 of this same form dated October 1 says under the heading, "inmate's statement and attitude. Grayson has a good attitude. Grayson stated that the incident is true as written. Grayson also stated that he suffers from sleeping sickness and is one of eight people in the United States who have this sickness." It says, "he asked Mr. Jones to take him off early wake-up and Mr. Jones said that he would. Grayson said he liked the work and would work at night shift somewhere if we would let him."

Is that what you told them, told the committee?

A If it is on that report. I don't remember, sir.

Q Well would you look at this form and see if there is anything on that form anywhere that would indicate that you told them that you were being harrassed or threatened or [74] intiminated by another inmate?

A There is no where on this form where that would be shown.

Q What?

A I did not do that.

Q You did not tell them that?

A No. As I have explained, I did not.
Q You testified earlier that you did.
A No, I did not, sir.
Q Pardon?
A I did not, sir.
Q What did you tell us you told Captain Kurd, Mr. Kurd?
A I said that I think I might have asked him what the situation would be and what action would be taken if that were the situation, if some inmate came to him with that situation.
Q When did you tell Captain Kurd this?
A I said I think, sir.
Q You think?
A Yes.
Q You are not sure?
A No, I am not.
Q Do you think it may not have occurred, too?
A It is very possible.
[75] Q Why are you telling us?
A Because you asked the question.
Q I asked you the question if you told the people on the committee anything about this.
A I think you asked me why I didn't.
Q Pardon?
A I think you asked me why I hadn't.
Q I asked you if you told anyone in this committee that you had your hearing with.
A At that there committee, at that time, no sir, I did not.
Q Now you are telling us you did not say anything to the committee.
A To the committee, no sir.
Q But you did tell us earlier that you thought you told Mr. Kurd that. Mr. Kurd was on the committee?
A Yes, he is also the Captain at the institution.
Q When would you have told Mr. Kurd that if you didn't tell him at the committee meeting?
A Prior to the committee I was in Captain Kurd's office. We discussed several things, my job, the job that I was working at, this incident here. He spoke to me

about my future after I got out of Allenwood. We talked about many things.
Q When did these conversations with Captain Kurd [76] take place?
A I can't remember the date or the time, sir.
Q About what time was it in relation to your walking away from the camp?
A Over a week prior to that.
Q So you were in Captain Kurd's office a week prior to your leaving the camp?
A Yes.
Q But you didn't bother going to the Captain, Captain Kurd, or the control center when you were threatened on the 11th?
A That is quite a bit of time beforehand. I hadn't been threatened.
Q On October 11th you hadn't been threatened?
A No, not at that time and not at this time either.
Q The 11th of October?
A I was threatened that day.
Q The day you left?
A Yes sir.
Q And why didn't you go to the control center or to Captain Kurd then?
A For many reasons. For one, I would have had to be involved with a confrontation between myself and Mr. Barnes. The prison grapevine—as I am sure you are familiar with—is pretty effective. I know of stories of inmates being [77] stabbed for being an informer. I know of stories of inmates being stabbed while they sleep for debts not being paid. There is no security facilities at Allenwood. There is no place that I could have been housed to protect me.
There would have been a compounding of the problem, as I saw it then. I would have been making it worse for myself. I would have been putting myself in more jeopardy.
Q You've heard of transfers for safety reasons, haven't you, safety of the inmate?
A Transfers for safety, yes. When the inmate is in an institution where it has the facilities, such as a seg-

regation facility, they will move him from one part of the institution to another part of the institution. That is under observation. But at Allenwood, Allenwood doesn't have the facilities like that.

Q You could have asked for a transfer until the heat blew off?

A Sir, I asked for a transfer and it had been denied. I had asked for a transfer verbally every week for other reasons, and I had been told no.

Q You were asking for a transfer before this game took place?

A After the game took place.

Q And what was your reason for the transfer after the game?

[78] A After the first request slip that I put in for transfer, which was prior to the game, I didn't give a reason. I just asked Mr. Steppie, the unit counselor for my dormatory, if I could be transferred, if it was possible, that the time had arrived that I could be transferred, and I was told no.

THE COURT: Mr. Nagle, I'm not clear—maybe the jury isn't clear—as to whether by "transfer" the witness means transfer from one dormatory to another or whether he is talking about a transfer from Allenwood Prison Camp to some other institution.

MR. NAGLE: Transfer out of the camp to another institution.

THE COURT: All right.

BY MR. NAGLE:

Q You had asked for a transfer in early September to the Metropolitan Correctional Center?

A In New York, sir, yes sir.

Q In New York to be near your business, didn't you?

A Yes.

Q And they turned that down?

A As I understand it Allenwood didn't turn it down. The MCC wasn't accepting transfers at that time and verbally I requested transfer, the same transfer.

Q Now they turned you down because the Metropolitan Correctional Center was over crowded at that time?

[79] A I understand it is a new institution and they were having difficulties.

Q They were not accepting transfers?

A That's correct.

Q That was in early September, is that correct?

A Yes it was.

Q Now after you received these threats that you are talking about, did you go to anybody and tell them about the threats and suggest that they transfer you?

A Yes I did.

Q Who did you tell that?

A I did not tell anybody about the threats, to answer the first part of your question. On the second part of your question, I did ask for a transfer to MCC.

Q Who did you ask?

A Mr. Steppie.

Q When?

A The week of that problem, and it was probably that Friday.

Q Did you tell him that you were being pressured?

A No I didn't.

Q What did you ask him?

A I said is it possible that I could be transferred?

Q Did you tell him where you wanted to be transferred to?

[80] A I don't recall whether I mentioned it again or not. I don't remember.

Q When did you decide to leave the camp?

A After I was threatened with the stick. I didn't decide; I just ran. I didn't sit down and think about it.

Q You say you didn't take anything with you?

A Yes sir.

Q You just went in your prison clothes?

A Yes.

Q Did you ever change clothing?

A In New York, yes.

Q In New York?

A Yes.

Q You did not leave your clothing on the grounds of the Allenwood Prison Camp?

A No I didn't.

Q Are you familiar with Penny Hill, the term Penny Hill?
A Penny Hill?
Q Yes.
A No sir.
Q Did you meet anybody when you left the camp?
A Did I meet anybody?
Q Yes.
A I hitchhiked.
[81] Q How did you get to New York?
A A truck, a semi-truck.
Q Were you hitchhiking?
A Yes sir.
Q What clothes were you wearing then? Institutional?
A In part. I had a civilian sweater.
Q Institutional clothing has bin numbers on, correct?
A Sure.
THE COURT: Has what?
MR. NAGLE: Bin, b-i-n numbers.
THE COURT: All right.
THE WITNESS: It has laundry numbers, yes.

BY MR. NAGLE:

Q So when you looked at a piece of clothing worn by an inmate, inmates' clothing have bin numbers on and you can identify which inmate it is assigned to by looking at the bin number, can't you?
A Sometimes, yes you can.
Q You did not change clothing before leaving the grounds of the prison camp?
A Before leaving the grounds, no sir, I did not.
Q Where did you depart, from what point of the fence surrounding the camp?
A Just off the other side of the fence. I don't [82] at what point.
Q Did you walk out toward Route 15 or over a hill?
A There is a road that runs backwards from the camp, a dirt road. I just went down the dirt road and came to a fence, went over the fence. I took my jacket

off and I threw that down. That was on the other side of the fence, and then I stuck my thumb out.
Q You took your jacket off?
A Yes.
Q This was at night?
A Yes.
Q In October?
A Yes.
Q And you were going out on the highway to hitch hike?
A Yes.
Q And you took your jacket off?
A Yes.
Q You had no other jacket to wear?
A I had a sweater.
Q You were going all the way to New York without a jacket?
A Well I expected to get a ride. I didn't expect to walk.
Q You expected to hitchhike?
[83] A Yes.
Q You really didn't expect to get all the way to New York with a single ride, did you?
A I didn't think about it. I just stuck my thumb out.
Q Did you go ahead north or south on Route 15?
A North.
Q North?
A Sure.
Q Where did you go to?
A I got a ride to Route 80, I believe it is. I'm not sure. And the person that picked me up—
Q Route 80 is south of Allenwood, is it not?
A I don't know. I stuck my thumb out and somebody picked me up. And I said I was going to New York, and they said they would drop me off at the interstate. They dropped me off at the interstate, and the next ride I got another ride, and they took me to a truck stop. I got off there and I asked a couple of truck drivers to give me a ride to New York. One was going

to Astoria and Queens. And I asked him, and he said yes, and he took me right straight to New York.

Q And you did not take anything with you?

A No, I did not take anything with me.

Q Why didn't you admit your identity when the special agents asked you who you were?

[84] A I called my lawyer as soon as I got to New York, and he said that when they arrest me not to say anything to them, not to resist arrest, not to give them a hard time; to go with them, but not to say anything to them.

Q You wouldn't even identify yourself?

A I didn't say one way or the other.

Q Did you deny who you were?

A No I didn't. I said I am not going to say whether I am Ted Grayson or not, and I was sitting in plain view. I wasn't hiding. I was sitting right in front of them. He had a picture in his hand looking at the picture and me, so it was evident that—

Q You heard Agent Petersen say that you denied that you were Ted Grayson?

A I also heard him say that I wasn't cuffed, and the other agent said that I was.

Q You weren't what?

A That I wasn't handcuffed.

Q You heard him say you deny this that you were Ted Grayson?

A Yes, I guess I did.

Q Did you hear agent Bullard say about the same thing?

A I think he said that I didn't admit to being Ted Grayson. I didn't say no I am not Ted Grayson.

Q Did you hear him testify that you denied you were Ted Grayson?

[85] A As I remember the testimony, he wasn't sure.

Q And you were present in the apartment with several other people, is that correct?

A There were other people in my apartment.

Q And you heard Mr. Petersen say they were uncooperative and would not offer identification.

A I heard him say that.

Q Had you had conversations with them telling them not to reveal your identity?

A No, they knew I was waiting for the F.B.I. to come to the apartment.

Q Well why did you go all the way to New York if you were going to turn yourself in?

A I was scared.

Q Why didn't you go to Lewisburg and turn yourself in?

A I didn't know where to turn myself in. My lawyer is in New York. I know one place that they would look for me was at home. I wasn't going to be jumped on like, you know, for having escaped grabbed, or the possibility of even being shot or anything like that.

MR. NAGLE: No other questions, your Honor.

THE COURT: Any redirect?

MR. HUMPHREY: Yes, your Honor.

REDIRECT EXAMINATION

[86] BY MR. HUMPHREY:

Q Mr. Grayson, there was a question asked whether those in the game understood that the stakes were for cigarettes, and you said that you thought that they were. Do you know what other people understood the game to be, or are you saying that you understood it?

A That is what I understood.

Q Do you know what the other people understood the game to be?

A No I don't.

Q Who were the other people in the game? Do you know who they were?

A I know their first names.

Q Were they friends of Sarge, to your knowledge?

A Yes, they were his hang-out friends. They hung out together.

Q Why is it that you did not discuss the fact that he had reneged on the rules of the game by demanding money?

A With them?

Q Yes.

A They would have gone along with him.

Q Did any of these friends of Sarge ever—were they ever present either on October 9th or October 11th?

A Both times they were there.

Q And specifically which of those times? It is my [87] recollection that you testified to at least three different confrontations on those two dates.

A Yes.

Q Once on October 9th, once on October 11th at about 3:30, or some time in there, and once just before you left?

A Yes.

Q Which of those times were these friends of Sarge present?

A One of them was present all three times, and two of them were present twice.

Q Now you testified that you left your jacket out side the fence, is that correct?

A Yes.

Q What did the jacket look like?

A A large Army jacket.

Q And why did you take that off?

A I felt that it would be conspicuous. I would be right outside the grounds. I might get shot. There were State Troopers, or highway patrol officers that patrol that area. I would have looked to an alert officer of the Law, like somebody who had just run out of Allenwood. I didn't want to get shot or grabbed.

Q Why wouldn't you want to be picked up by a State Trooper at that point?

A The State Trooper had stopped me, then I wouldn't [88] have run. I would have been outside Allenwood.

Q Were you attempting to avoid the State Troopers at that point?

A No, I was right out on the road with my thumb out. I had a civilian sweater that are allowed at Allenwood. I felt my chances of getting a ride standing there looking like a civilian, not looking like dressed in matching shirt and pants.

MR. HUMPHREY: That's all I have, your Honor.

THE COURT: Any recross?

MR. NAGLE: Yes.

RECROSS EXAMINATION

BY MR. NAGLE:

Q You said in your original cross examination you were looking for a place to turn yourself in?

A No sir, I didn't say that.

Q What did you say?

A I said a lot of things, sir. I don't know what you are referring to. Are you referring to whether I was running and trying to avoid serving my sentence? If that is what you are asking, I was not.

Q You told us, as I recall it, you went to New York because your attorney was there and you wanted to find a place to turn yourself in.

MR. HUMPHREY: Your Honor, I don't think that that [89] is what he said at all. I object. Unless we can get the reporter to read back that portion of the transcript, I don't think Mr. Nagle should characterize exactly what he said. I think we could ask him did you say this, Mr. Grayson can then say yes or no.

THE COURT: What is your view, sir?

MR. NAGLE: It is my recollection that that was his answer to one of my questions. And my question right now is directed to where it says there was an effort to hide his identity from the State Police and the highway patrol.

THE COURT: Well, I would prefer not to have the credibility of an Attorney pitted against the credibility of a witness. I will sustain the objection but permit you to ask him whether he said so and so.

MR. NAGLE: Whether he said what?

THE COURT: Whether he said so and so.

BY MR. NAGLE:

Q All right. You did take your jacket off so your identity as an inmate would not be discovered by a highway policeman?

A I was scared, sir. I wasn't thinking.

Q So when you left the camp, you had the intention of not being detected as an inmate.

A Just getting away from Allenwood.

Q You could have carried it on your arm?
[90] A I could have. I didn't stop to think about it. I had no plan.
Q You say all you dropped was your jacket?
A I threw my jacket. And well, I took off what was on top of me, a shirt, a jacket and a sweater underneath the shirt, and I took them off and threw them down.
Q Now we have a shirt and a jacket. First it was a jacket. You told us only just a jacket. Now it is a shirt and a jacket, is that correct?
A I did not say it was only the jacket.
Q What else other than a shirt and a jacket?
A A shirt and a jacket.
Q How about trousers?
A No.
MR. NAGLE: No other questions, your Honor.
THE COURT: All right, you may step down, sir.

(Witness excused.)

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[91] Now do you wish to call another witness?
MR. HUMPHREY: I would like to put a stipulation on the record first of all.
THE COURT: Is it agreeable with Mr. Nagle?
MR. HUMPHREY: Yes. As I read to you in the hall, Mr. Nagle.
MR. NAGLE: Yes.
MR. HUMPHREY: I request that Mr. Nagle stipulate to the following facts: Records in Defendant's prison file indicate that upon commitment to Allenwood he furnished information indicating that his legal address was 4 Park Avenue, New York, New York.
THE COURT: Is that agreeable?
MR. NAGLE: Yes.
THE COURT: Now do you have another witness?
MR. HUMPHREY: Yes I do.
I will call Mr. Crews.
GREGORY W. CREWS, witness called, being duly sworn, was then examined and testified as follows:

DIRECT EXAMINATION

[92] BY THE COURT:

Q What is your last name?
A Crews.
Q How do you spell it?
A C-r-e-w-s.
Q Your first name?
A Gregory.
Q Do you have a middle initial?
A W.
Q Where do you reside?
A In Lewisburg.
Q What is your occupation?
A I am an Administrative Assistant to the Business Manager at the Allenwood Federal Prison Camp.

BY MR. HUMPHREY:

Q How long have you been employed in your capacity?
A Roughly about three months.
Q What was your occupation on or about October of 1975?
A Official Clerk in charge of the commissary.
Q In that position did you keep any records of the amount of money deposited and withdrawn in the inmate's prison accounts?
A Yes sir.
Q Can you identify this document which I have marked [93] for identification as Defendant Exhibit 1?
A Yes sir.
Q What is that?
A This is a photostatic copy of an inmate ledger card.

(Photostatic copy of inmate's ledger card—produced and marked for identification as Defendant Exhibit No. 1)

BY MR. HUMPHREY:

Q And for what inmate does that card?
A That particular card is for Ted Grayson.

Q And is this document compiled and kept, or was it compiled and kept, by you in the ordinary course of your business at that time?

A Yes sir.

Q Now when are entries made on these cards?

A On the day that they happen.

Q So in other words if there is a deposit in an account one day, it is marked on the ledger sheet, and on the day that there is a withdraw, it is marked, is that correct?

A Yes sir.

Q And do you know whether an inmate is permitted to have cash?

A Absolutely not.

[94] Q And this is the method which the inmates use to purchase goods, is that correct?

A Yes sir.

Q Now drawing your attention to D-1, could you please indicate how many deposits prior to October 11, 1975 there were?

A There were two.

Q And what was the total amount of deposits?

A Fifty dollars.

Q Now how many withdrawals for Mr. Graysons' commissary account were there?

A Four.

Q Can you give the dates and the amounts of each of those withdrawals?

A On September 9 he withdrew $9.40 for commissary purchases.

On September 18th he withdrew .35, and on September 30th he withdrew $31.80. And on October 9th $8.39.

Q Now is there any limit upon the amount of money which an inmate can withdraw from his commissary account?

A Yes sir.

Q What is that limit?

A The limit is $45 in a calendar month.

Q Is there any limit within that month? For example we have on September 30 a withdrawal of $31.80. Is

there any [95] limit as to a single withdrawal, or can he withdraw the whole $45?

A No sir. He could spend it all at one time or he could spread it out over the month.

Q Now is there any indication on this card that after October 11th that certain other money was deposited in Mr. Grayson's prison account?

A Yes.

Q And what was the date of that, and the amount, please?

A On October 21st there was $525.99 deposited to the account.

Q Now let me ask you this: following the $8.39 withdrawal on October 9, what was the balance of Mr. Grayson's account?

A Six cents.

Q And therefore as of October 21 with the deposit of $525.99, his total was $526.05, is that correct?

A That is correct.

Q And was that withdrawn at some point?

A It was withdrawn on the 22nd of October.

Q I know that it is marked under "other withdrawals", there is a W after it. Does that have any significance?

A It just means that it is other withdrawals. In other words it is taken out of his account for his purpose to [96] be sent, or for me to transfer it to him.

Q In other words it was not a commissary purchase?

A No sir.

Q Are you aware of the other regulations concerning commissary purchases that were in effect in September and October of 1975?

A Yes sir.

Q Is there any limit upon the number of cigarettes that inmates can purchase?

A Yes sir.

Q What was that limit?

A Four cartons per.

Q Four cartons per what?

A Per shopping sale. A man can only go to the store once a week. At that particular sale he could buy four cartons, but no more.

Q All right. Do you know if there was any reason for that regulation?

A Nothing other than it was carried over from the Lewisburg Institution, and we limited them to four cartons. That's all I know.

MR. HUMPHREY: Your Honor, I would offer Defendant Exhibit No. 1 into evidence.

THE COURT: Any objection, Mr. Nagle?

MR. NAGLE: What was the offer?

[97] THE COURT: Defendant exhibit No. 1.

MR. NAGLE: No objection.

THE COURT: We will admit it.

(Defendant exhibit No. 1, having been previously identified, was received into evidence.)

MR. HUMPHREY: I have nothing further.

THE COURT: Cross examine?

MR. NAGLE: Yes, your Honor.

CROSS EXAMINATION

BY MR. NAGLE:

Q Mr. Crews, on direct examination you were questioned about exhibit D-1, the ledger sheet in the account of the Defendant, is that correct?

A That is correct.

Q This shows a balance of six cents? What is that date?

A That is October 9.

Q And that was following a withdrawal of $8.45 on the same day, is that correct?

A That's correct.

Q The next entry is a deposit of $525.99?

A That's right.

Q What was the date of that deposit?

[98] A The 21st of October.

Q Do you have any record of the source of that money?

A Yes sir.

Q Where did it come from?

A That money came from New York.

MR. NAGLE: That will be Government Exhibit 4, is that correct, your Honor?

THE COURT: Yes.

BY MR. NAGLE:

Q I show you what has been marked for identification as Government exhibit 4, three zerox copies of documents, is that correct?

A Yes.

Q And what is that first page?

A The first page is CMS 21 transmittal form from the MCC in New York, and the second page is a copy of the back of that 24 transmittal form.

(Transmittal form—produced and marked for identification as Government exhibit No. 4.)

BY MR. NAGLE:

Q On the first page is the reference to the reverse side?

A Yes there is.

[99] Q And what is the last page?

A The last page is a copy of the form 14 which is a receipt.

THE COURT: A what?

THE WITNESS: A receipt for that amount of money of $525.99.

BY MR. NAGLE:

Q And who would have to prepare the first two pages of the original document?

A New York would have been the originating office.

Q Who would have prepared the last of those three pages?

A The mail room officer at our institution.

Q At Allenwood?

A Yes sir.

MR. NAGLE: I will show these documents to counsel for the Defendant.

BY MR. NAGLE:

Q What is the date of the first copy, the one prepared in New York?

A On the first document it would be September 17th.

Q Now what does that represent? What does that date represent?

A It represents the day that this was typed up.

[100] Q How was this transfer request initiated?

A Mr. Grayson, to my recollection, was transferred from the MCC in New York to our institution. This would have been a transmittal of funds that he had at that institution, transmitting it to this institution at Allenwood.

Q Well did Mr. Grayson go to your office and request transfer of these funds, or were they automatic?

A It normally is automatic, but this was done September 17th.

Q Supposedly, yes. Do you know whether Mr. Grayson actually made a request?

A He did. He made, to my recollection, at least two.

Q When were these requests made?

A The dates I cannot tell you, sometime after he came in, and he was admitted sometime around the 29th of August.

Q Did he make the request to you?

A Yes sir, he did.

Q Now how close would it have been to the date that he arrived, the 29th of August? Would it have been a week or a month later? I'm not trying to suggest anything; I'm merely asking you to try to give us an approximate time, an approximate day.

A It was more than likely the early part of September which would have been his first request.

[101] Q It would have been before the 17th?

A I would think so, yes.

Q And when was the second request made?

A That might have been sometime on or after the 18th of September.

Q What did you tell Mr. Grayson regarding the transfer of funds?

A I told him to give it at least two or three weeks to transfer them from New York, and then I would call New York and check on what the hold up was on his funds.

Q Did you call New York?

A Yes I did.

Q Did you report on your results of that call to Mr. Grayson?

A I believe that when he came down the second time, I told him that I had called them.

Q And what did you tell him about it?

A I told him I called New York about his funds and they said they would be transferred down.

Q There was a flood in September of this past year, is that correct?

A That is correct.

Q Did that in any way reflect your recollection as to the time you talked to Grayson?

A I know that he had come down some time during that [102] period and checked with me about his funds, and he had asked, or stated, that he wanted the money for his wife to pay bills with.

MR. NAGLE: Your Honor, I have to take judicial notice of the fact that the flood occurred on the 26th of September.

THE COURT: I know that the Agnes Flood was June 22 of 1972, but I don't know the date of the flood last year, and I don't think it is of such general knowldge that I am in a position to take judicial notice of it. It could easily have been September 14th as far as I am concerned.

BY MR. NAGLE:

Q Now on exhibit D-1 it says $525 was transferred out of your institution eventually.

A Yes.

Q And it was transferred to an institution as to which the Defendant was put after he was apprehended, is that correct?

A According to my recollection, I called the control center at the camp and asked them where Mr. Grayson

had been transferred to, and they told me MCC in New York so immediately the day after I received it, I transferred it back to them.

Q So the credit was only in Lewisburg for a single day or so?

A I believe so. I am not sure of that.

[103] Q Now these documents, Government exhibit 4, are these copies of the original records of your office?

A Yes sir, they are.

Q Is the regular course of business in your office to make and receive these and keep these records?

A Yes sir.

Q And what is your position?

A Right now I am an Administrative Assistant to the Business Manager.

Q And it is part of your duties to maintain custody of these records?

A Yes sir.

Q And are these, Government Exhibit 4, are these genuine copies of the original records of your office?

A Yes they are.

MR. NAGLE: Your Honor, I move for admission into evidence of Government exhibit 4.

THE COURT: Any objections?

MR. HUMPHREY: No, your Honor.

THE COURT: We will admit them.

(Government exhibit No. 4, having been previously identified, was received into evidence.)

MR. NAGLE: That's all, your Honor.

[104] THE COURT: Any redirect?

MR. NAGLE: No, your Honor.

THE COURT: What did you say, Mr. Nagle? I thought you said something?

MR. NAGLE: Mr. Humphrey might have said something.

MR. HUMPHREY: I think Mr. Nagle was asking if the witness may be excused.

THE COURT: I didn't hear it.

Do you have any further questions?

MR. HUMPHREY: No sir.

THE COURT: You may be excused.

(Witness excused.)

• • • •

[107] DAVID M. LEE, witness called being duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY THE COURT:

Q What is your last name?

A Lee, L-e-e.

Q Your first name?

A David.

Q Do you use a middle initial?

A M.

[108] THE COURT: All right.

BY MR. HUMPHREY:

Q Mr. Lee, are you an inmate at the Allenwood Federal Prison Camp?

A Yes I am.

Q And how long have you been an inmate at that camp?

A Since August 28th of last year.

Q 1975?

A Yes.

Q In the period of September and October of 1975 did you know Mr. Ted Grayson, the Defendant in this case?

A Yes.

Q Hod did you know him? Was he a friend of yours?

A The day I went to Allenwood he came in from West Street, and I came in from Danburry, Conn., Federal Penitentiary. And we met where you get your clothes at. As being friends, I just knew him to say how are you, and what's happening and so forth.

Q Did you socialize with him within the prison camp?

A No, not really.

Q Did you know an inmate by the name of Alexander Barnes?

A No I don't.

Q Do you know an inmate whose nickname was Sarge?

[109] A Yes I do.

Q And how did you know Sarge?

A About the same way. I lived there at a small camp with about 400 people. You get to know everybody there.

Q Now it has been stipulated in this case that Mr. Grayson left the Allenwood Prison Camp on October 11, 1975. Prior to that time, did you ever witness any confrontation between Mr. Grayson and this inmate you know as Sarge?

A I know what you're getting at. Yes. I heard Sarge talk to Grayson in a loud voice one day, but that's all. I never seen no harm, no hands or no shuffling whatsoever.

Q Do you know what day it was you heard him talking in a loud voice?

A I believe it was a Saturday.

Q Do you know if it was close to the time that Mr. Grayson left the prison camp?

A I seen Grayson that day, and then I think it was the next day, or the day after, and I heard that he escaped.

Q So it was just before, on the day or just before, the day that he escaped that you—

A I don't know when he escaped, but I heard it was right then that Grayson boogied through the woods.

Q You said you heard them talking in a loud voice. Did you see anything at all? Did you see Mr. Grayson and Sarge?

[110] A I seen several people.

Q Who else did you see besides Mr. Grayson and Sarge?

A Like I said, I seen several people. I couldn't tell you who they were because I wasn't paying any attention. If someone gets in a beef, that's their problem. I just kept on walking when they were talking loud, minding my own business.

Q Where was it you saw these several people, Sarge and Mr. Grayson?

A In Dorm 5 and 6.

Q Where abouts in Dorm 5 and 6?

A As soon as you go in the door.

Q And about what time of the day was that?

A I believe it was around a little after three. I believe I had a visit that day. That's where I was going to 5 and 6 after the visit.

Q Did you hear any of the words being said?

A I didn't pay any attention. When I came in, you couldn't help but seeing them because they were right in front of you, and like I didn't stay there for the conversation but what drew my attention was the loud talking, but I kept on walking.

Q Who was doing the loud talking?

A I couldn't really say who was doing the loud talk-

[111] ing; but if I said it sounded like a black guy, you know, black guys usually have a—you can usually tell the way they talk—but there was more than one black guy there, so I couldn't say who it was.

Q Of the men standing there, other than Mr. Grayson, how many white guys were there and how many black guys?

A Just Grayson was the only white guy.

Q And do you know how many black guys there were standing there?

A I couldn't say, six or five or four, but there were more than two. There was a few. Like I say, it was like you are going through a door and you look in and see that you don't count. You couldn't see what they were wearing or what how many there was, like I say, when I came through the door they were there and I just kept on walking.

Q You say it was loud. You heard loud voices. Was it an argument-type of thing? Can you characterize the type of conversation that was being held or the type of words being said?

A No.

Q It was loud, however?

A Yes, it was loud.

Q And did you hesitate to, or stop at all to see what was happening?

A No.

[112] Q Isn't this the type of thing that would warrant your attention?

A I look after Dave up there. I don't look after nobody else.

MR. HUMPHREY: Nothing further.

THE COURT: Cross examine?

MR. NAGLE: No questions, your Honor.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Do you have another witness, Mr. Humphrey?

MR. HUMPHREY: No, your Honor. The Defense rests.

• • • •

[113] ALEX B. BARNES, witness called being duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY THE COURT:

Q What is your last name?
A Barnes.
Q B-a-r-n-e-s?
A Yes sir.
Q Your first name?
A Alex.
Q A-l-e-x?
A Yes.
Q Do you use a middle initial?
A Yes, B.
Q Is your nickname Sarge?
A That is what quite a few people call me, sir.

THE COURT: All right, Mr. Nagle.

BY MR. NAGLE:

Q Mr. Barnes, do you know the Defendant, Ted Grayson?

A Yes sir, I have seen him in camp.

[114] Q And were you an inmate at the Federal Prison Camp in Allenwood in October of 1975?

A Yes sir, I was.
Q Are you an inmate now?
A No sir, I'm not.
Q When did you stop being an inmate?
A January 6th of this year, sir.
Q Were you paroled or were you released at the end of your sentence?
A I was paroled, sir.
Q Mr. Barnes, you were convicted in the United States District Court for the Western District of Kentucky on October 17, 1974, is that correct?
A Yes, sir.
Q And the offense for which you were convicted was a violation of Title 21 Section 841 (a) (1), which would be a violation of distributing a controlled substance, referred to as drugs?
A Yes sir.
Q You received a five year sentence on that, is that correct.
A No sir. Four years.
Q Excuse me. You are right. Four years.

What prior convictions or felonies have you suffered in the past other than that one?

[115] A None what so ever.
Q Now when did you come to Allenwood, approximately?
A I believe it was in July, approximately July 15th or 1975.
Q And you stayed there until January 6th of 1976?
A Yes sir.
Q Then you were released on parole?
A Yes sir.
Q Now Mr. Barnes, do you play cards?
A Yes sir.
Q Poker?
A Yes sir.
Q At the prison camp did you ever play poker with the Defendant?
A No sir.

Q Did you ever play cards with the Defendant?
A Yes sir.
Q What kind of cards did you play?
A Spades, Hearts.
Q What were the stakes, if any?
A We didn't have any—25 pushups.
Q What?
A Twenty five pushups.
Q Twenty five cigarettes?
THE COURT: He didn't say cigarettes. He said [116] twenty five pushups.

BY MR. NAGLE:

Q Twenty five pushups.
A Yes.
Q Excuse me, that's a physical exercise, is that correct?
A Yes sir.
Q And you did not play for anything of value like cigarettes or money?
A No sir.
Q Do you owe the Defendant any money?
A No sir.
Q Did the Defendant owe you any money?
A No sir.
Q When did you play cards with the Defendant?
A I can't truthfully say right off hand. We used to play every night. A group of us would get together.
Q Did you ever have a fight with the Defendant?
A No sir.
Q Did you ever threaten the Defendant?
A No sir.
Q The Defendant testified in this case that you were the dealer in a poker game, and that he lost 40 cartons of cigarettes.
A No sir.
[117] Q He did not? You were not in that game?
A No sir.
Q Did you ever see the Defendant gambling?
A No sir.

Q Did you ever go into his dorm?
A Yes sir.
Q What dormitory did you live in? And in what dormatory did he live in?
A He lived in 5, I lived in 6, the same building, right next door, the two joining together.
Q Did you ever pick up a board and threaten him with a board?
A No sir.
Q Did you ever have a loud argument with the Defendant?
A No sir.
Q Did you ever speak loudly around the Defendant?
A I may have spoke loudly around him, but I speak loudly quite often through force of habit. Being in cells a lot of times, I would talk loudly.
Q And do you know Mr. Lee, the previous witness?
A Yes sir. I have seen him in and out of the camp.
Q Did he talk to you at all lately about this case?
A Yes sir. He talked to me and Mr. Miller, one of the inmates—excuse me—one of the guards—and quite a [118] few other people there.
Q What did he tell you about this case?
A He had got into some trouble and was sent up to Union County. And upon his return from Union County he had said he ran into Grayson there and Grayson had asked him to be a witness for him, stating that he had seen me hit him and threaten him. He told me this. He told Mr. Miller this, one of the guards there.
He said that he had to appear in Court because he was going to be subpoenaed by Grayson's attorney.
Q Does the Defendant owe you anything?
A No sir.
Q Do you owe the Defendant anything?
A No sir.
Q Did you ever threaten, or in any way, threaten the Defendant?
A No sir.
Q Did you ever lift your arm or anything that could be considered a weapon towards the Defendant?
A No sir.

Q Did anybody in your presence do that?
A No sir.
MR. NAGLE: No other questions your Honor.
THE COURT: Cross examine?
MR. NAGLE: May I ask one more question?
[119] THE COURT: Do you have any objection, Mr. Humphrey?
MR. HUMPHREY: Pardon me?
THE COURT: Any objection?
MR. HUMPHREY: I'm sorry. I didn't hear what he said.
THE COURT: He said he released the witness too soon and he has at least one more question.
MR. HUMPHREY: No objection.
THE COURT: All right.

BY MR. NAGLE:

Q When did I speak to you for the first time?
A I believe it was last week on the telephone.
Q And was it late last week, the last week of January or the first week of February?
A It was I think the first week of February. I'm not too sure.
MR. NAGLE: Thank you. That's all.

CROSS EXAMINATION

BY MR. HUMPHREY:

Q When was it that Mr. Lee came up and engaged in a conversation with you that you just testified about?
A I think it was approximately about three weeks to a month before I was released for parole.
Q You were paroled January 6th?
[120] A Yes.
Q So it was three weeks to a month, somewhere between December 6th and January 6th?
A I believe so, sir. I can't say for sure.
Q And where did he talk to you? Where did he approach you?
A In the dormatory.

Q Do you reside in the same dormatory?
A No we don't.
Q Did he come into your dorm?
A Yes he did.
Q And who was with you at that time?
A I was actually by myself, but there was some more people around.
Q And again what did he state to you?
A He said that Grayson had approached him and asked him to be a witness for him. Stating that I had threatened him, and he had seen me jump on him, and that he would be subpoenaed to appear in court.
Q Did he tell you that he was going to testify in favor of Grayson?
A He said that he was going to tell the truth, that he hadn't seen me jump on Grayson or heard me Threaten him.
Q Did he tell you that he was going to testify that he saw you and Grayson, or saw you and several other [121] inmates, gather around Grayson and talking in a very loud manner.
A No, he didn't.
Q When Mr. Grayson walked off at Allenwood, was that fairly well known around the prison camp? Does that kind of thing get around?
A Yes sir.
Q You were aware of it about the time that it happened?
A Yes sir.
Q On the day that it happened, or on two days previous, did you have any arguments with Mr. Grayson?
A No I didn't, sir.
Q At that time did you ever confront him with other inmates near the doorway of dormatory 5 and 6?
A No sir.
Q You never played any card games for stakes other than pushups with Mr. Grayson, is that correct?
A Right.
Q And what was the game that you did play with Mr. Grayson?
A Spades and hearts.

Q What is spakes? Just briefly what kind of game is it?

A It's like spakes is trump, and the object of the [122] game is to get 150 points. The one who gets 150 points first wins.

Q And hearts is the same, similar to spades?

A Right.

Q Now do you ever play poker with anyone at Allenwood?

A Yes sir. I played poker with some of the guys down there.

Q Do you ever play for stakes rather than pushups?

A No sir. Very seldom. We play for a pack of cigarettes, one or two cigarettes.

MR. HUMPHREY: Nothing further.

MR. NAGLE: Your Honor, may the witness be excused?

THE COURT: Do you have any other questions?

MR. NAGLE: No, your Honor.

THE COURT: Yes, you may be excused.

(Witness excused.)

MR. NAGLE: I will call Mr. Ressler.

WALTER N. RESSLER, witness called, being duly sworn, examined and testified as follows:

DIRECT EXAMINATION

BY THE COURT:

Q Your last name?

A Ressler.

Q R-e-s-s-l-e-r?

[123] A Yes sir.

Q And your first name?

A Walter.

Q Do you use a middle initial?

A N.

Q Where do you live?

A Northumberland.

Q Are you a correctional officer?

A Correctional counselor.

Q Where?

A Allenwood.

Q And how long have you been in that position?

A Three years.

BY MR. NAGLE:

Q Mr. Ressler, you are employed as a correctional officer and correctional counselor on October 12, 1975?

A Yes sir.

Q And what was your shift that date?

A Day work, acting Lieutenant.

Q What were your duties?

A What was I doing?

Q Yes?

A Well at the time I went out I started to shake-down the fence area in regard to this man leaving.

Q Are you talking about the Defendant, Ted Grayson?

[124] A Yes sir.

Q Shaking down the fence area. What did you do? This fence runs for many miles, doesn't it?

A Yes. I started out, naturally, as close to the barricks or dormatory as possible.

Q And did you go in a vehicle?

A Yes. Then got out and walked so far, and then proceeded that way.

Q Is there an area of the Allenwood Camp known as Penny Hill?

A Yes sir.

Q When you got there, what did you find with regard to the fence?

A Right up on, let's say it would have been the South side of Penny Hill near the top, there was what I noticed mostly a break in the fence, a big break that cattle or anything could go through.

Q How high is the fence?

A There is a chain link fence, I would say it is six feet high. Then on top of that there is possibly six strands of barbed wire, someplaces three strands.

Q Was it as tall as I am or taller?
A I would say it was as tall as you or taller.
Q And where was the break in the fence?
A From the chain link fence down it was torn, like
[125] flattened out. You could almost step over it.
Q Could you go through the hole?
A With the clothing I have on now, I could step through it.
Q The same as you are dressed now?
A Yes.
Q What did you have to do to walk through that hole?
A I just stepped over and walked through it and went over through the brush.
Q You didn't have to climb over the fence?
A Oh no.
Q Now how often, and for what reason is this fence checked for holes like that?
A Well it is checked practically every day by the cattle detail officers.
Q Why is that?
A On account of the cattle naturally getting out on highway Route 15, or any place else out of the area that they are not supposed to be.
Q How far is Highway 15 from this point?
A That particular area right to the berm of the road I would probably say 25 or 30 yards, you know, to the fence. Then there is a little brush.
Q Can you see highway Route 15 from the fence?
A Yes.
[126] Q Can you see the fence from highway 15?
A Yes. That particular little section, yes.
Q I think you said you went through the fence. What did you find in the area outside the fence?
A Well within about an area of 5 yards of the berm where the cars could pull off in a clump of bushes I found this bundle of clothing, but they were scattered, which I picked up.
Q Does that include this belt, sir?
A Yes sir.

MR. NAGLE: Do you have a marking pen, your Honor?
THE COURT: Try this one. If it won't show, we will get something else.
MR. NAGLE: I think it's showing fine, your Honor.

BY MR. NAGLE:

Q Now Mr. Ressler, I have marked for identification this object as Government exhibit 5.1 and this appears to be a jacket, is that correct?
A Yes.

(jacket, produced and marked for identification as Government exhibit No. 5.1)

BY MR. NAGLE:

Q Is this a Government issued jacket?
A Yes.
Q Issued to inmates?
[127] A Yes.
Q How are you able to identify it?
A I would go by this here, this thing in here.
Q Are you talking about the label inside the collar?
A Yes. This is government issue clothing and we get a lot of this surplus.
Q Surplus Army clothing?
A Yes.
Q I show you Government exhibit 5.2 which has been marked for identification. Tell us what that is.
A This is our clothing, and it is a bin numbered article.
THE COURT: Would you please identify what it is. I know what you have in your hands, but the record won't show it.

BY MR. NAGLE:

Q Is this a kaki shirt?
A Yes, this is a kaki shirt. Then it has a bin number in the bottom. These are the clothing that are assigned to the inmates when they get there.

(Kaki shirt—produced and marked for identification as Government exhibit No. 5.2)

BY MR. NAGLE:

Q What is the bin number on the shirt, Government [128] exhibit No. 5.2?
A It is number 323.
Q Three-two-three. That is the bin number?
A Yes.
Q What is a bin number?
A A bin number is a number that has been assigned to a man's clothing when he gets there, and he keeps that as long as he is there. It is stamped. When they go through the laundry, they are brought out and they are sorted out. Three-two-three bin would be his bin.
Q Now when clothing gets changed from one inmate to another and there is a bin number on it, what happens?
A The bin numbers are blocked out.
Q I show you Government exhibit 5.3. This is a pair of trousers, right? Now this, as you see here, is blocked out.

(Kaki trousers—produced and marked for identification as Government exhibit No. 5.3.)

BY MR. NAGLE:

Q There were bin numbers on there?
A Yes, and the size is inside there stamped in, and this pair here is a pair which would be classified as work clothing, and would have no bin numbers in these.
Q There are no bin numbers on work clothing?
[129] A No.
Q I show you Government exhibit 5.4, a belt, is that correct?
A Yes. This is a regulation belt. We give these to many of these—these aren't even marked. We don't mark them.

(Belt—produced and marked for identification as Government exhibit No. 5.4.)

BY MR. NAGLE:

Q Now I show you Government exhibit marked for identification as 5.5 which is a memorandum written by you, is that correct?
A That's correct.

(Memo by Mr. Ressler—produced and marked for identification as Government exhibit No. 5.5.)

BY MR. NAGLE:

Q Now are Government exhibits 5.1 through 5.4 the clothing that you found outside the hole in the chain link fence on Penny Hill?
A They are.
Q Is that the clothing?
A Yes.
Q What did you do with it after you found it?
A Took it in, naturally shook it down, the clothing, [130] checked the bin number. I called Mr. Miller about the bin number in the shirt. He stated that it was—
Q Well, don't answer what he stated.
A Well then I proceeded to wrap it up and put it in the vault.
Q You did what?
A I wrapped it up. I brought it in here and put it in our vault.
Q And you picked it up again today from the vault?
A And I picked it up again today from the vault and I brought it in here.
Q And Government exhibit 5.5, the memorandum, when did you write that memo?
A Ten/twelve/seventy-five.
Q When?
A Ten/twelve/seventy-five.
Q When did you find the clothing? The same day or another day?
A Let's see? Yes.
Q The same day?
A Yes.
MR. NAGLE: I show the entire exhibit to counsel for the Defendant, your Honor.

I move for the admission of Government exhibits 5.1 through 5.5 inclusive and I pass the witness, your Honor.

[131] THE COURT: All right.

Any objection, Mr. Humphrey?

MR. HUMPHREY: I would prefer to question the witness first.

THE COURT: All right. We will withhold the ruling on the exhibits until after the witness is ready to step down.

CROSS EXAMINATION

BY MR. HUMPHREY:

Q Mr. Ressler, what of this clothing is marked with Mr. Grayson's bin number?

A The shirt has a bin number on it.

Q Is that the only thing that is marked with his bin number?

A Yes.

Q Well this memorandum from you that the attached clothing is suspected belonging to Ted Grayson marked with bin number 323, the bin number marking applies only to the shirt, is that correct?

A That would pertain to that.

Q Now why aren't the pants marked with a bin number?

A That particular pair of pants was work clothing.

Q How do you know it was work clothing?

A By the way it is stamped out. Everything is marked out but the size.

[132] Q Who would wear this kind of work clothing?

A Just about anybody would when the need work clothing.

Q Does anybody who worked wear that kind of clothing?

A On outside details, yes.

Q Is a record kept as to whether or not an inmate would have those particular kind of work pants?

A Not the work clothing, no, not on that particular work clothing, there would be no record.

Q Is there any particular reason why it is not marked with a bin number?

A Is there any particular reason?

Q Why they don't mark the work pants with a bin number?

A Yes. Because usually they have some of the men wear them down like in the garage and they are real dirty. They are usually old clothing to begin with, and they are really dirty, and what have you. And then they end up throwing them away.

Q Does an inmate keep the same issue of work clothing, or when it gets dirty throw it away, or does he get another pair or a different pair?

A Generally the work clothing is turned in and it is laundered and sorted out by size and then sent to the details [133] by size so they could get it back again, but they wouldn't know which it was. They get it just by size.

Q They would get the work clothing then from the details that they were working at?

A From the clothing room officer, he would have handled it. The clothing room officer would handle it.

MR. HUMPHREY: No further questions. And I have no objections to the exhibits.

THE COURT: All right, Mr. Nagle, any redirect? I will admit all those exhibits, Government exhibits 5.1 thru 5.5.

(Government exhibits 5.1 through 5.5, having been previously identified, were received into evidence.)

REDIRECT EXAMINATION

BY MR. NAGLE:

Q Mr. Ressler, were these clothing, where you found them, where you first saw them, were they separated by any spaces, or were they all in one place?

MR. HUMPHREY: Your Honor, I object. I think that is beyond the scope of cross examination. I didn't ask any questions of that type.

THE COURT: What is your comment on that?

MR. NAGLE: He asked questions about this shirt [134] being the only one having a bin number, your Honor.

THE COURT: I know, but what did he bring up on cross examination new which would permit you to ask where the clothing were strewn?

MR. NAGLE: Well, your Honor, I object to that statement of being strewn. I think my question is actually repetative. I think the first thing he said was it was all in a pile in a bush.

THE COURT: Well all right. I may have misunderstood. I thought that is what Mr. Humphrey said. I will sustain the objection because I don't think this related to any new matter which he brought up.

MR. NAGLE: I think the witness has already covered this once anyway.

THE COURT: Well he probably has.

MR. NAGLE: That's all I have, your Honor.

THE COURT: You may be excused.

(Witness excused.)

MR. NAGLE: I will call Mr. Miller.

IVAN G. MILLER, JR., witness called, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY THE COURT:

Q Your last name is Miller?
A Yes.
[135] Q And your first name?
A Ivan.
Q And do you use a middle initial?
A G, and Jr.
Q Where do you reside?
A Mifflinburg, Pa.
Q What is your occupation?
A I am an MA Correctional Officer at the Federal Prison Camp.
Q And how long have you had that position?
A I think it is approximately two years.

Q Approximately two years?
A Yes.

BY MR. NAGLE:

Q Now Mr. Miller, do you have any duties in your job regarding clothing issues at the Allenwood Prison Camp?
A Yes sir.
Q Were you in charge of that in October of 1975?
A Yes sir.
Q And are you in charge of it now?
A I beg your pardon?
Q Are you in charge of that now?
A I am, yes.
Q Are you familiar with the term bin number?
A Yes sir, I am.
[136] Q What does the term bin number mean?
A Every resident who comes in there is given a bin number; so that when their clothes are washed, that the clothes get back to that inmate.
Q Is there any record?
A Yes, I keep a record in this book.
Q Now I show you Government exhibit 5.2, a shirt which has been admitted into evidence, and on the inside of the shirtail, the number 323 appears. What is that?
A That is the bin number given to an inmate marked by our machine.
Q Can you tell us in October of 1975 to whom that bin number was assigned?
A That bin number was assigned to T. Grayson, 00209 on 8/29.
Q T. Grayson, is that the Defendant?
A Yes sir.
MR. NAGLE: No other questions, your Honor.
THE COURT: Mr. Humphrey?

CROSS EXAMINATION

BY MR. HUMPHREY:

Q I was a little bit inattentive when you first began testifying. Are you in charge of the clothing issue?
A Correct.

Q What items of clothing do you mark with a bin number?

[137] A We usually mark all kakis and the kaki shirts and trousers. We send all our laundry to Lewisburg.

Q Yes.

A If a man doesn't get his trousers back, sometimes they are a month before they come back. He will come in and tell me he has no trousers, and I will tell him we will give him some out of the mark-out bin which we have no numbers on.

Q Do you keep a record of who gets that type of clothing?

A No. That is all work clothing.

Q You have a record of who does not get their clothing back from the Lewisburg laundry?

A No. If I go to that, I would spend all my time keeping records.

Q Do you know if Ted Grayson was given this pair of work pants?

A I can't say he was, no I can't say he was.

Q Are these work pants?

A They are.

Q How do you know?

A Well, here you see all these numbers here are marked out. When they are marked out that means the man went home.

BY THE COURT:

Q It means what?

[138] A He went home, your Honor.

Then the size is also stamped on the machine. So anyone who has no trousers, we will pull these out of the bin and give these to him till the clothes come back from Lewisburg.

BY MR. HUMPHREY:

Q Now those who work also wear these work trousers?

A Everyone wears them, kakis and also greens.

Q How do they get them for work?

A They get them from the clothing room.

Q And is it anybody who has a job at Allenwood gets these?

A Anyone who is in the camp. They all get their clothes from there.

Q And do all people in the camp who are in some work detail wear these type of work pants?

A Oh yes, the whole camp either wears kakais or greens.

Q How about those in the kitchen, what do they wear?

A They wear white. The kitchen and the hospital wear whites.

MR. HUMPHREY: That's all.

MR. NAGLE: That's all I have of this witness.

THE COURT: You may step down.

(Witness excused.)

MR. NAGLE: May the last two witnesses be excused?

[139] THE COURT: Yes.

MR. NAGLE: I will call Mr. Curd.

THOMAS G. KURD, witness called, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY THE COURT:

Q Your last name?

A Curd.

Q C-u-r-d?

A Yes sir.

Q Your first name?

A Thomas.

Q Do you use a middle initial?

A G.

Q Where do you reside?

A In Lewisburg.

Q What is your occupation?

A I am a Chief Correctional Supervisor at Allenwood.

Q How long have you had that position?

A About a year.

THE COURT: Thank you.

BY MR. NAGLE:

Q Mr. Curd, as Chief Correctional Supervisor, you are on occasion referred to as Captain Curd?

A That's right.

[140] Q And you are in charge of all the custodial officers at the Allenwood Camp, is that correct?

A That's correct.

Q And do you know the Defendant, d Grayson?

A Yes sir.

Q Was he an inmate there up until October 11, 1975?

A Yes sir.

Q Did he appear before you as a member of the institution disciplinary committee on or about the 1st of October, 1975? And I show you what has been marked for identification as Government exhibit 3.

A I don't believe he appeared on this report here. This report here was handled at the UDC level. I think there was a following report within a couple of days.

BY THE COURT: What is the UDC level?

A Well, we have two disciplinary committees there. Any minor sanction can be handled by a supervisor in charge of the shift, which is what happened in this case here. He was just warned and reprimanded for not being to work on time.

If it is a repeated action, something that happens again, or maybe a couple more times, at this time the supervisor will refer it to the institution disciplinary committee which has three people sitting on that committee. And at this time they hear the case.

Q What is the UDC?

[141] A It stands for a unit disciplinary committee.

BY MR. NAGLE:

Q I show you what has been marked for identification as Government exhibit 3.1. This is the institutional disciplinary committee form is that right?

A Right.

(Disciplinary committee report of UDC—produced and marked for identification as Government exhibit 3.1.)

BY MR. NAGLE:

Now that, along with Government exhibit 3, contains a block for the statement by the inmate, is that correct?

A Right.

Q And did you serve on that institutional disciplinary committee on October 3, 1975?

A Yes I did.

Q Did the Defendant appear before your committee?

A Yes sir.

Q This was regarding his failure to get up on time and respond to some command?

A Yes sir.

Q What did he tell your committee that day? Well let me change the question: did he tell your committee that he was [142] any way being intimidated or threatened by any other inmates?

A No sir.

Q Did you ever have meetings with the Defendant in your office prior to his escape?

A Yes sir.

Q And during what period of time were the meetings held?

A It was usually for some kind of an infraction of the regulations of some kind, usually just a warning about being late for work or something of this nature.

Q And how close to the date of his escape was your last meeting with him in your office, approximately?

A Maybe two weeks.

Q Did he ever make any statement in your presence which would indicate in any way that he was concerned about threats from other inmates?

A No sir.

Q If he did, what would you have done?

A Well, if he told us that he was being threatened and was scared, we would have to either remove him from the population or maybe try to transfer him to another place for his protection.

Q You would have taken some affirmative action?

A Yes sir.

Q Did he ever make such a complaint to you?

[143] A No.

Q Did he ever imply to you that that might be the case?

A In no way.

Q Do you remember the escape incident involved in this case? Do you remember the day of the escape?

A Not very well, no.
Q Do you know whether any other inmates escaped during that same day?
A I don't believe so.

BY THE COURT:

Q What do you mean you don't believe so? You don't know or you don't believe—
A I don't know.

BY MR. NAGLE:

Q Are you familiar with the visitors' record log in the penitentiary?
A Yes sir.
Q The document I show you, is that the visitors' log, not the penitentiary log—let me ask it this way: the visitors' log for the Allenwood Prison Camp?
A Yes sir.
MR. HUMPHREY: You Honor, I object to this. I don't think it is proper rebuttal at this point. I don't see anything that we brought up in our case which would warrant any [144] type of rebuttal concerning visiting records.
THE COURT: What do you propose to do?
MR. HUMPHREY: May we approach the bench on this?
THE COURT: Yes.

(At Side bar.)

MR. NAGLE: This would show that he had regular visits from his wife who gave her address as many different places, none of them 4 Park Avenue. It also shows that he had visits from his wife on October 7th, October 8th and October 9th. Two days before October 9 was two days within his escape. He had people he could have communicated with for two reasons: one, if he had been threatened, she could have gotten him help, more likely that she met him on the highway at the break in the fence with a change of clothing. That's all I have on that your Honor.
THE COURT: Well I see most of it, but I'm not positive that this evidence tends to show that there was

premeditation with the escape, and it wasn't the result of being threatened that day? Is that what you are saying?
MR. NAGLE: It wasn't an emergency thing that he had to leave on that day.
THE COURT: What is your comment on that, [145] Mr. Humphrey?
MR. HUMPHREY: There wasn't what, an emergency?
MR. NAGLE: He claims it was an emergency, such an emergency that he just ran and didn't take anything with him.
MR. HUMPHREY: I don't think this shows anything except that he received visits three days, the 7th, the 8th and the 9th.
MR. NAGLE: This also shows addresses at 135 Water Street, 60 South Cottage Street, 20 Seaside Boulevard, 20-3 Seaside Boulevard. That's it.
THE COURT: I will over rule the objection.

(In open court.)

BY MR. NAGLE:

Q You have identified this as the visitors' log at the Allenwood Prison Camp as to the Defendant?
A Yes sir.
Q Now on the left hand side there is a document. What is that document?
A This is the list of authorized visitors.
Q What is the first entry there?
A Cathy Newman, wife, 4 Park Avenue, New York.
Q And the next one?
[146] A Ed Mueller, business associate, 4 Park avenue, New York.
Q Then there are other entries with other names and other addresses, is that correct?
A Right.
Q Now go to the right side. What are these documents?
A This is the date that they had visits.
Q Does it show the name of the visitors and the relationship?
A Yes.

Q What is the top one?
A C. Grayson, wife, 135 Water Street.
Q W. Water Street?
A W. Water Street, right.
Q What was the date of that visit?
A 10/7/75.
Q What is the next one?
THE COURT: Before you leave that, what community is indicated there?
MR. NAGLE: No community is indicated, your Honor.
THE COURT: All right.

BY MR. NAGLE:

Q What is the next one? What is the date?
A 10/8/ C. Grayson.
[147] Q What is the address there?
A 135 W. Water Street.
Q There is no Community. Is there a State?
A Yes. Maryland.
Q Maryland? Is that right?
A Right.
Q Not New York?
A Not New York.
Q The next visit he had was, there was one on the 7th, one on the 8th, and what is the next one?
A The 9th. And it looks like 60 S. Cottage Street, in Maryland.
Q Now how many visits of his wife did he have that is shown by this entire file?
A Twenty six.
Q Any of the addresses supplied at the time of his wife's visit as 4 Park Avenue, or are they all different addresses?
A Well—
Q There is one address 20-3 Seaside Boulevard, is that correct?
A Yes, 20-3 Seaside Boulevard. There is no state. Well here it is, the state is Maryland. And it looks like that is the only other difference.
Q There is 135?

[148] A Well I have already given that one, so I've already given the 135.
Q So that the Defendant had a visit from a woman identifying herself as his wife on the 7th, the 8th and the 9th of October, 1975, is that correct?
A Yes sir.
Q She furnished an address other than 4 Park Avenue, New York, New York?
A Yes.
MR. NAGLE: No other questions, your Honor.
THE COURT: Cross examine?
MR. NAGLE: For the record, I will move for the admission of Government exhibit 3.1 and Government exhibit 3, 3.1 being the original record. It will have to be copied, and I also ask that the visitor's log be marked as Government exhibit G6. Is that the next number, your Honor?
THE COURT: Yes.

BY MR. NAGLE:

Q Now Mr. Curd, I show you what has been marked as Government exhibit G6. This is the entire visitors' log regarding the Defendant at Allenwood Prison Camp, is that correct?
A Yes sir.
MR. NAGLE: I move for the admission into evidence of G-6. The witness had already testified to it. This is [149] merely for record purposes.
THE COURT: Do you object to that, Mr. Humphrey?
MR. HUMPHREY: No sir.
THE COURT: We will admit that. What about G3.1 which is the disciplinary report?
MR. HUMPHREY: No I don't object to it.
THE COURT: We will admit both of them.

(Government exhibit 3.1, having been previously identified, was received into evidence.)

(Government exhibit 6, visitors' log-produced, marked for identification and received into evidence.)

MR. NAGLE: Has G-3 been admitted?
THE COURT: No, it has not.

MR. NAGLE: I would move for the admission of Government exhibit 3.

THE COURT: Any objection to that? G-3 is the incident report of October 1, 1975.

MR. HUMPHREY: What am I looking at here?

MR. NAGLE: That is G-3.

MR. HUMPHREY: And what is the other one?

MR. NAGLE: G3.1 is the IDC report.

MR. HUMPHREY: No objection.

[150] THE COURT: All right. We will admit Government exhibit 3.

(Government exhibit 3, having been previously identified, was received into evidence.)

CROSS EXAMINATION

BY MR. HUMPHREY:

Q Captain Curd, this state on this visiting sheet says Maryland. Does that indicate that Maryland is the license plate of the car?

A Yes sir.

Q So whoever that visitor was did not say that she resided in Maryland, then, is that correct?

A No sir. It just says the car that she is driving has a Maryland license tag on it.

Q All right. What is Penny Hill?

A That is the hill directly behind the buildings. The buildings set on the side of Penny Hill, the dormatory.

Q Is Penny Hill near the road or Route 15?

A Yes, one end of it is.

MR. NAGLE: This question of Penny Hill is well beyond the scope of my direct examination. That was discussed with Mr. Ressler.

MR. HUMPHREY: I don't believe I am confined to the scope of his direct examination, your Honor.

[151] THE COURT: We will permit inquiry into the matters beyond the subject matter of the direct examination as if on direct.

BY MR. HUMPHREY:

Q Is Penny Hill fairly famous among those at Allenwood as a drop-off point for contraband coming in and out of the camp?

A Yes sir.

Q On this disciplinary report what was the incident with which he was charged?

A Failure to report to work and stand count.

Q And what count did he fail to stand? When did he fail to report to work and where?

A He failed to report to work in the kitchen, and the count was shortly after five.

Q Do you know whether or not Mr. Grayson worked in the kitchen?

A Yes he did.

MR. HUMPHREY: That's all I have, your Honor.

THE COURT: Anything further?

REDIRECT EXAMINATION

BY MR. NAGLE:

Q Mr. Curd, you are the Chief Correctional Supervisor, in charge of security, is that correct?

A Yes.

[152] Q You testified on cross examination about Penny Hill being a drop-off spot for contraband coming into the institution, is that correct?

A Yes sir.

Q Well, if that is true, is there any special precaution taken to search that area on a daily basis?

A Not daily, no. But periodically, yes we do have stake outs every so often, especially around the holidays and at times that we suspect that there will be a large amount of contraband coming in.

Q If there are any holes in the fence which are found, what is done about the hole?

A We usually try to keep it repaired.

Q How quickly?

A It could be anywhere from a week to two months.

Q Does it take that long?
A It could.
MR. NAGLE: No other questions.
THE COURT: Any recross?
MR. HUMPHREY: Yes sir.

RECROSS EXAMINATION

BY MR. HUMPHREY:

Q Captain, is it a fairly easy matter for an inmate to climb the fence to get out?
A Yes sir.
[153] MR. HUMPHREY: That's all.

BY THE COURT:

Q What is the post office address for the Allenwood Prison Camp?
A I don't really know.
Q Well do you know how mail is addressed to the prison camp?
A Please repeat the question.
Q Do you know how mail is addressed to the prison camp?
A Just Allenwood, Montgomery Federal Prison Camp, Montgomery, Pa.
Q Montgomery, Pa. Is that the postal address for the prison camp, Montgomery?
A Yes sir.
Q All right. Is there a West Water Street in Montgomery?
A I don't know, sir. Let me explain something to you: I am fairly new in this part of the country, and I have never written a letter to the camp.
Q But do you get mail there?
A Yes sir.
Q Is is addressed to you at Montgomery?
A I think it is addressed either Montgomery or in some instances it seems like I've seen Allenwood/Montgomery.

[154] Q The post office is at Montgomery?
A Yes sir.
THE COURT: Do you have any cross examination with respect to the Court's questions, Mr. Humphrey?
MR. HUMPHREY: No, your Honor.
MR. NAGLE: No, your Honor. I think the box number is Box 1000, Montgomery, Pa.
THE COURT: All right. You may step down.

(Witness excused.)

MR. NAGLE: I will call Mr. Steppie.
JOHN J. STEPPIE, witness called, being duly sworn was examined and testified as follows:

BY THE COURT:

Q What is your last name?
A Steppie.
Q S-t-e-p-p-i-e?
A Yes.
Q Your first name?
A John.
Q Do you use a middle initial?
A J.
Q Where do you reside?
A Watsontown, Pa.
Q What is your occupation?
A I am a Correctional Treatment Specialist at the
[155] Allenwood Federal Prison Camp.
Q And how long have you had that position?
A I've been employed there since February of 1973.
Q I don't know what a Correctional Specialist Treatment is. Will you illuminate me?
A Basically we provide a host of social services to a given number of people on a case load.
Q Would it be fair to say that you are a social service case worker assigned to the prison camp and in the pay of the United States?
A Yes it would be.
THE COURT: All right.

BY MR. NAGLE:

Q Now Mr. Steppie, on October 1975 the Defendant was on your case load as a case worker, is that correct?

A Yes sir, he was.

Q You know the Defendant?

A Yes.

Q Was he in your case load when you first arrived in August of 1975?

A Yes sir, I believe he was.

Q And shortly after he arrived, did he come to your office regarding the request for a transfer?

A Yes sir, he did.

Q What did he ask for?

A I believe Mr. Grayson asked for a transfer to the [156] Metropolitan Correction Center in New York City so that he could be closer to his wife or his girlfriend, either one.

Q Were you able to work that out?

A No sir, we were not. We processed his request through the classification committee, and we learned that because the facility had been opened not too many months prior to that, that they were already over-crowded and they were not accepting anyone, to be transferred to that institution.

So as a result we told Mr. Grayson this was the case; and just as soon as they were accepting people into that facility, we would work his request up again.

Q When was this decision not to transfer him made?

A Well without looking at the files, I don't recall.

Q Would it have been early or mid September, 1975?

A I would think so, sir. I would think so, yes.

Q Do you recall any events around the date of the escape in this case that he walked out of the camp on the 11th of October, 1975?

A No sir. I was quite surprised to hear that he had taken off, that he had escaped.

Q Prior to that time, closer to that time, did he—other than the one incident you just spoke of—did he talk to you again about a transfer?

A Yes sir. Mr. Grayson talked to me several times about transferring. Prior to going up to the committee

and [157] following his denial by the committee, he did talk to us about transfer, yes.

Q What did he say? Why did he want to transfer?

A Well I believe the reason was he wanted to be closer to his common law wife, girlfriend, because she was having problems in the community, and this way it would have been easier for her to visit with him, being that she was from the New York City area if he was at the MCC in New York.

Q Did he tell you anything about any absolute emergency situation requiring an immediate exiting from Allenwood?

A I kind of recall that, sir, yes sir. He said it was —but exactly what the emergency was, I don't recall.

Q Where was the emergency supposed to have been?

A I believe it was with his common law wife.

Q And did he get a transfer then?

A No sir.

Q Did he ever talk to you about any adverse pressure against him by anyone at Allenwood?

A No sir, he did not.

Q Did he ever tell you that anyone was threatening him in any way?

A No sir, he did not.

Q If he had, as a case worker, what action would you have taken?

[158] A Well the procedure is to verify the information to see if there is in fact a threat against a man's safety; and if that proves to be the case, then we usually transfer him to another institution.

Q But you would have taken some affirmative action if he reported to you any threat or force against him?

A Yes, we would have, but again Mr. Grayson did not tell me specifically that his safety was in jeopardy.

Q He did tell you there was some emergency in New York?

A Yes, concerning his common law wife.

MR. NAGLE: No other questions.

THE COURT: Mr. Humphrey?

MR. HUMPHREY: Yes sir.

CROSS EXAMINATION

BY MR. HUMPHREY:

Q When was the last time Mr. Grayson talked to you about his transfer?

A Specifically, sir, I can't recall, but I do know that he spoke to us about this frequently after coming into the camp.

Q Now you mentioned his wife, his girlfriend, his common law wife. Is this all one person?

A Yes sir.

Q And do you know whether or not she is his wife or [159] his girlfriend, or what?

A No, no sir I do not know.

Q What did Mr. Grayson tell you about it?

A I believe he said that the lady was his wife, and the information we had revealed that she was female acquaintance he had met prior to coming into his sentence.

Q Were you aware that this woman was living in the area of the Allenwood prison camp.

A Yes sir, I was aware of that.

Q Did Mr. Grayson ever talk to you about any problems that she was having in the community?

A Not in the Allenwood community, no sir.

Q Did he ever inform you that she had been flooded out of the place where she was staying in Muncy, Pennsylvania?

A Not that I can recall, sir.

Q Now after the first—

THE COURT: Just a second. I will take judicial notice that 135 West Water Street, Muncy, was completely under water during the flood of this last fall. The water was probably up about eight feet deep at that point.

BY MR. HUMPHREY:

Q Mr. Steppie, the first time Mr. Grayson talked to you about a transfer was on a request slip, and your response, or his request and your response, was made a part of his central file, is that correct?

[160] A Not exactly, sir. The first time he spoke to me about it was prior to his putting in the request in writing which we had requested of him.

Q Now other than his request in writing that he makes, do you make any notation of oral requests for transfer that he makes to you?

A No sir. We would have to receive his request in writing. The only exception would be in an emergency situation and then of course we would go on the basis of the man's verbal request.

Q So the fact that he may have talked to you five or six times, or several times, about a transfer, would not necessarily show up in his central file?

A No sir.

Q You would have no written record of what exactly his request was, is that correct?

A Well I was aware of what his request was because we had spoken about his request for a transfer on a number of occasions. As a result I asked Ted to put it in writing so we could put it before the classification committee who would then vote on it.

Q All right. Now in the occasion when an inmate comes to you in one of your case loads and says that he is being threatened, is there any type of investigation that is conducted, or do you just accept his word and transfer him [161] out right away.

A No sir, there is an investigation involved.

MR. HUMPHREY: I have nothing further, your Honor.

THE COURT: Do you have anything else, Mr. Nagle?

MR. NAGLE: May we approach the bench, your Honor?

THE COURT: Yes.

(At side bar.)

MR. NAGLE: Earlier I asked your Honor to take judicial notice that the flood occurred September 26th.

THE COURT: But I don't know that. I can't do it because I don't know it.

MR. NAGLE: You have taken judicial notice very infaticaly that 135 West Water Street is in Muncy.

THE COURT: Absolutely. I know that. That is generally known.

MR. NAGLE: I don't know that.

THE COURT: Well, that's too bad. This is in the community, but I don't know when that flood occurred. We could probably reconstruct it. I know that we were hearing the Bryan Case in Lewisburg, but it is hard for me to know—I just simply don't know that date. I wouldn't know, frankly, whether it was September or October, which [162] one it was.

MR. NAGLE: It was in September because you were up here.

THE COURT: That's quite right. Well do you know when the flood was Mr. Humphrey?

MR. HUMPHREY: No sir. I don't have any great objection if he knows for a fact that it was September.

MR. NAGLE: I don't want this jury thinking that there was a flood emergency on October 11th.

THE COURT: All right. If you precisely know when the flood was.

Do you know when it was?

THE LAW CLERK: I agree with Mr. Nagle. It was the 26th.

THE COURT: All right then I will take judicial notice of it then.

MR. HUMPHREY: The 26th, was that the Friday that we helped take the furniture out?

THE LAW CLERK: Yes, Mr. Humphrey, September 26th is a Friday.

THE COURT: Well let's see. All right. I have figured it out. It was a Friday. All right.

MR. HUMPHREY: Your Honor, I'd like to request to have a short surrebuttal. There are [163] certain new matters which were brought up, but I'd like a 10 minute recess after the Government closes mainly not only to talk to the witness but to my client.

THE COURT: Well we won't adjourn without giving you a chance to raise it.

Anything else?

MR. NAGLE: Your Honor, you are going to take juricial notice of that?

THE COURT: Yes.

MR. HUMPHREY: I have no other questions.

THE COURT: All right.

(In open court.)

THE COURT: Now it has been agreed by counsel that the flood did occur on Friday, September 26th 1975.

Is that correct?

MR. HUMPHREY: That would be the first day of that flood.

THE COURT: All right. Well I know that it did. We will let it go at that.

Now before you step down, I'm going to direct the jury to disregard the appelation of common law wife or girlfriend that phrase that was used by Mr. Steppie. I do not think it is proper to inject that into this case, and I do not want to have the jury prejudice the Defendant because of that [164] phrase. In my view it clearly should not be used in this case, and I direct you to disregard it.

All right. You may step down sir.

(Witness excused.)

MR. NAGLE: Your Honor, there was no request in that regard, in the comment the Court just made.

THE COURT: Well I have seen this happen before, and it occurs every now and then in pre-sentence reports. And I think governmental agents ought to refrain from doing it. The modality of this country is changing. Do you have anything else?

MR. HUMPHREY: No, your Honor.

THE COURT: All right.

Do you have surrebuttal?

MR. HUMPHREY: Yes, your Honor.

• • • •

[170] D. M. LEE, recalled.

DIRECT EXAMINATION

BY MR. HUMPHREY:

Q Mr. Lee, prior to today, how many times have you spoken with me?

A Once.

THE COURT: What do you mean, have you spoken? Is that all you said?

MR. HUMPHREY: I said have you spoken with me.

THE COURT: All right. I didn't hear that.

BY MR. HUMPHREY:

Q Was that at the Allenwood Prison Camp?

A Yes sir.

Q Did I interview you concerning this alleged escape?

A You rapped with me about Grayson, yeah.

Q Did you ever talk to Sarge about your testifying in this case?

A Yes.

Q And could you tell us what took place, please?

A I seen Sarge in 5 and 6 dormatory. That's where he slept. And when I went over to his bed and we were talking [171] and got to talking to me being in the Union County Jail where I was at for a shot that I got, he asked me if Grayson was there. And I said yes.

He asked me did I have a conversation with him. I told him yeah and what went down. This is what I told him. I said I seen Grayson in Union County Jail, and, you know, that he gave himself up after he ran, Sarge. Sarge said I didn't know that. I said he did.

And another thing, he was supposed to have run because of you threatening him. And he said that's a bunch of bull, or whatever, you know.

I said I don't know regarding anything to that, Sarge, but I told him and I want to tell you, too. So I don't want to get in the middle. I am going to Court and tell them what I seen.

But Grayson asked me if I saw you—which I was talking to Sarge—did I see Sarge beat him up.

And I said I'm going to tell them no, Sarge, because I didn't see that.

And Sarge said, well, you just tell the truth.

And that's what I have done right here today.

Q Did you tell Sarge you were going to testify that you saw he and several other inmates in a loud conversation with Grayson?

MR. NAGLE: Your Honor, counsel has a habit of standing between me and the witness. I wish he would stand [172] at the side.

THE COURT: I can't hear what you are saying.

MR. NAGLE: Counsel has a habit of standing between me and the witness, and I wish he would stand aside.

THE COURT: All right.

BY MR. HUMPHREY:

Q Did you tell Sarge that you were going to testify to what you testified to here today?

A Yes.

Q And what you testified to what in fact you saw on this particular day?

A I didn't say what I was going to testify to. I said when I go to Court and testify, if I have to go, I hope I won't, I am going to tell the truth. I didn't say —lead Sarge out of the way on anything—you know. I didn't say this is what I'm going to say because I didn't know what I was going to say because I didn't know what I was going to be asked.

Q And your testimony here earlier, the first time you testified, is that in fact what you saw on this particular day?

A Yes.

MR. HUMPHREY: I have nothing further.

THE COURT: Any questions, Mr. Nagle?

CROSS EXAMINATION

[173] BY MR. NAGLE:

Q Did you see Mr. Alex Barnes threaten the Defendant?

A Is that Sarge, Alex Barnes, is that Sarge?

Q Yes.

A No I didn't.

Q Did anyone ask you to testify to that?

A Can I do what?

Q Did the Defendant ask you to come into Court and say Sarge, or Alex Barnes, threatened him or beat him up?
A He didn't ask me to come in Court and say that.
Q He asked you to do what?
A He didn't ask me to come in Court and say that.
Q Did he ask you to say it to anybody?
A No he didn't.
Q Did he tell you what happened?
A Yes he did.
Q And you came here under a compulsory process, issued by Defense Counsel?
A I don't know how I got here.
Q The United States Marshall brought you here?
A I took that into consideration. I know how I got here, but I don't know what the process was how I got here.

MR. NAGLE: Your Honor, I'd like the Court to take judicial notice that the witness is here under a writ issued by the Court at the request of Defense counsel.

[174] THE COURT: Well I don't think I can take judicial notice of that.

MR. NAGLE: It is part of the record.

THE COURT: It may be part of the record, but that isn't what you take judicial notice of as far as I know, I take judicial notice of facts which are so well known in a community that they don't have to be proven, and scientific facts which are so susceptible of direct proof by examination of a tretis that they don't have to be proven.

No I have no doubt that the two of you can agree that the witness, Mr. Lee, is here under a subpoena and an order issued by this Court. If you want to agree to that, that's fine.

MR. HUMPHREY: I would agree to that, your Honor, and Mr. Nagle.

MR. NAGLE: Thank you, your Honor.

THE COURT: Do you have anything else?

MR. NAGLE: No other questions.

THE COURT: Any redirect?

MR. HUMPHREY: No, your Honor.

THE COURT: All right. You may step down.

(Witness excused.)

THE COURT: Do you have any further surrebuttal?

MR. HUMPHREY: Yes. Mr. Grayson.

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[176] T. R. GRAYSON, re-called.

DIRECT EXAMINATION

BY MR. HUMPHREY:

Q Mr. Grayson, there has been introduced into evidence various visitors' slips, and I would like to show you these. Here is the one for October 7th, C. Grayson, wife, 135 W. Water Street, 10/8/75, C. Grayson, wife, 135 W. Water Street, 10/9/75. C. Grayson, wife, 60 South Cottage Street, and there are others in here from C. Grayson at 135 West Water Street address. And there is also some from C. Grayson, 20 Seaside Boulevard.

There's also some C. Newman, relationship, Grayson, wife, 20-3 Seaside Boulevard. Is this the same person, C. Grayson and C. Newman?
A Yes.
Q Who is that?

[177] A A girlfriend of mine.
Q What is her name?
A Cathy Newman.
Q Is she your wife?
A No she is not.
Q And do you know, did she sign the visitors' slip as your wife?
A She did.
Q Do you know why?
A She told me that she thought that when she first visited that was the first thing she had written down. The first time she first visited she wrote our relationship that she was my wife. And the reason she did it she wanted to make sure that she would be able to see me.

Q And what was your relationship with Cathy Newman?

A I met her a month after I was separated from my wife, and we lived together.

Q How long had you been living with Miss Newman?

A A year. Our relationship is over a year.

Q Now there are these various addresses here. Do you know where 20-3 Seaside Boulevard is?

A That's Miss Ann Newman's address, Cathy's mother.

Q And where is that located?

A It's in Staton Island, New York.

Q And where is 135 West Water Street?

[178] A In Muncy.

Q And did Cathy Newman reside at 135 West Water St. in Muncy?

A She did.

Q And did she reside with anybody?

A She resided with the wife of another inmate at Allenwood.

Q And how long did she stay at 135 West Water Street?

A She was there from the second week in September when she moved up to Muncy from Staton Island until the day of the flood.

Q And was her apartment or her residence involved in the flood? Was it flooded out?

A Yes, she was evacuated. The whole building was evacuated.

Q Do you know who her landlord was?

A Mr. Parsones.

Q Who is he?

A The industrial supervisor at Allenwood Camp.

Q And where did she go after the flood?

A She applied to HUD, which is some urban development organization that helps flood victims, and they put her and Mrs. Capetowitz—I think her name is—that is Lee's wife.

Q Is this the inmate's wife that you have been [179] talking about?

A Yes. Some good samaritan in town gave them a residence. I think it was in a farm or at a farm until HUD was able to locate another apartment for them.

Q Do you know what address she used while she was at this farm house or this good samaratin's house?

A She continued to use 135 Water Street because that was her mailing address.

Q And did she eventually get another address some place?

A She got an apartment. HUD found her an apartmeit and the cottage on the south Cottage Street, I think it is.

MR. HUMPHREY: That's all I have, your Honor.

THE COURT: Any cross, Mr. Nagle?

CROSS EXAMINATION

BY MR. NAGLE:

Q You say this woman who signed in as C. Grayson, wife of you, had visits with you on the 7th, the 8th and 9th of October?

A Yes.

Q And she visited you regularly, is that correct?

A She did. She moved up to Muncy and visited me daily.

Q On September 26th, the day of the flood, you had a visit from C. Newman, Grayson's wife, is that correct, 9/26/75; [180] and also 9/25/75?

A Yes, that is correct. I am just seeing where she put the first address.

Q 9/25/75 she was living at 20-3 Seaside Boulevard.

A On 9/6/75 she was at 135 Water Street. She used this address back and forth between where she was living and her mother's address where she grew up.

Q The 25th s[illegible] used 20-3 Seaside Boulevard?

A Yes.

Q And then the 26th—

A The same address. And also the 6th.

Q And the 28th, two days later, Seaside Boulevard address and then on the 30th Seaside Boulevard address, is that correct?

A Yes.

Q Who is C. Newman Grayson?

A She is my girlfriend.

Q And who is Helen Capetowitz?

A That is the girl that she was sharing her apartment with.

Q Is she also known as your wife?

A No, she was visiting Lee Capetowitz, the roommate. I don't know what that is doing in that file, in my file. That is a mistake.

Q Apparently misfiled, is that correct?

[181] MR. NAGLE: That's all I have, your Honor.

THE COURT: All right. Thank you.

MR. HUMPHREY: Nothing further.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Do you rest?

MR. HUMPHREY: Yes sir.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Criminal No. 75-221

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

TED R. GRAYSON, DEFENDANT.

Williamsport, Pa.
March 12, 1976

BEFORE: HONORABLE MALCOLM MUIR.

SENTENCING

[2] THE COURT: You may proceed.

MR. NAGLE: Your Honor, this is the time for the sentencing of the case of United States of America vs. Ted R. Grayson, Criminal No. 75-221.

You, sir, are Ted R. Grayson, the Defendant named in the indictment filed in this Court to Criminal No. 75-221?

THE DEFENDANT: Yes, I am.

MR. NAGLE: And you are here represented in Open Court by your Court-appointed counsel, Attorney John M. Humphrey, is that correct?

THE DEFENDANT: Yes.

MR. NAGLE: Your Honor, this Defendant was charged by indictment on November 21, 1975 with escape by leaving the Allenwood Prison Camp. He was arraigned on December 2, 1975 and entered a plea of Not Guilty. The case was set for trial commencing on the January list. The case was tried on February 5 and February 6, 1976, and resulted in a verdict of Guilty. The Government now moves for sentencing.

The jury was selected, I believe, Your Honor, on January 6; but because of the extensive trial work the Court had at that period of time, the case was reached February 5.

THE COURT: Mr. Humphrey, have you received a copy of the Pre-sentence Report?

MR. HUMPHREY: Yes, Your Honor.

THE COURT: Have you had an opportunity to discuss [3] it fully with Mr. Grayson?

MR. HUMPHREY: Yes, Your Honor.

THE COURT: Do you know of any reason why sentence should not be imposed at this time, Mr. Humphrey?

MR. HUMPHREY: No, I do not, Your Honor.

THE COURT: Mr. Grayson, is there any reason you know of why sentence should not be imposed at this time?

THE DEFENDANT: No.

THE COURT: Mr. Humphrey, is there anything you wish to say in your client's behalf, or is there any information you wish to present to the Court by way of mitigation of punishment?

MR. HUMPHREY: Just a very few comments, Your Honor: Mr. Grayson, of course, went to trial in this case with the defense of coercion. He was convicted; and for what reason it is not entirly clear, but apparently the jury did not believe his story, or portions of it. The only thing I would like to say is that whatever was the reason that Mr. Grayson left Allenwood, it is clear, and I think that the evidence which was introduced at trial, would indicate that it was not with the purpose of forever trying to avoid the Federal authorities. He did apparently go straight to his legal residence as given to the Allenwood authorities and was there when the F.B.I. agents arrived.

We ask this Court to consider this fact when you impose sentence.

THE COURT: Mr. Grayson, do you have anything you [4] wish to say in your own behalf, or is there any information you wish to present to this Court in mitigation of punishment?

THE DEFENDANT: No, Your Honor.

THE COURT: Mr. Nagle, do you have any comments prior to sentencing?

MR. NAGLE: No, Your Honor.

THE COURT: All right. I'm going to give my reasons for sentencing in this case with clarity, because one of the reasons may well be considered by a Court of Appeals to be impermissible; and although I could come into this Court Room and sentence this Defendant to a five-year prison term without any explanation at all; I think it is fair that I give the reasons so that if the Court of Appeals feels that one of the reasons which I am about to enunciate is an improper consideration for a trial judge, then the Court will be in a position to reverse this Court and send the case back for re-sentencing.

In my view a prison sentence is indicated, and the sentence that the Court is going to impose is to deter you, Mr. Grayson, and others who are similarily situated. Secondly, it is my view that your defense was a complete fabrication without the slightest merit whatsoever. I feel it is proper for me to consider that fact in the sentencing, and I will do so.

The following is the sentence of the Court: It is adjudged that the Defendant is hereby committed to the custody of the Attorney General for two years—I'm sorry, I said the [4-A] custody of the Attorney General—or his authorized representative for imprisonment for a period of two years. The sentence shall begin at the expiration of any sentence or sentences the Defendant is now serving or for which he is being held.

You have the right to appeal this sentence, Mr. Grayson; and if you are unable to pay the costs of it, the Government will pay the costs together with your counsel fees.

That concludes this matter.

SUPREME COURT OF THE UNITED STATES

No. 76-1572

UNITED STATES, PETITIONER,

v.

TED R. GRAYSON

ORDER ALLOWING CERTIORARI

Filed October 3, 1977

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted.

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